



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2010 REGULAR SESSION

SENATE BILL NO. 152

WEDNESDAY, FEBRUARY 24, 2010

The following bill was reported to the House from the Senate and ordered to be printed.

RECEIVED AND FILED
DATE March 30, 2010
4:14 pm

TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adkins

AN ACT relating to business entities.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

1 ➔Section 1. KRS 271B.5-025 is repealed and reenacted to read as follows

2 A corporation that changes the mailing address of its principal office shall deliver to the
3 Secretary of State for filing, on a form supplied by the Secretary of State, a statement of
4 change that sets forth:

5 (1) The name of the corporation;

6 (2) The mailing address of its principal office prior to the change; and

7 (3) The new mailing address of its principal office.

8 ➔Section 2. KRS 271B.12-030 is repealed and reenacted to read as follows:

9 A corporation may be converted to a limited liability company as provided in KRS
10 275.376.

11 ➔Section 3. KRS 273.1842 is repealed and reenacted to read as follows:

12 A corporation that changes the mailing address of its principal office shall deliver to the
13 Secretary of State for filing, on a form supplied by the Secretary of State, a statement of
14 change that sets forth:

15 (1) The name of the corporation;

16 (2) The mailing address of its principal office prior to the change; and

17 (3) The new mailing address of its principal office.

18 ➔Section 4. KRS 275.247 is repealed and reenacted to read as follows:

19 (1) Except as may be otherwise provided in a written operating agreement, a limited
20 liability company may sell, lease, exchange, or otherwise dispose of all or
21 substantially all of its property with or without the good will, otherwise than in the
22 usual and regular course of business, on the terms and conditions and for the
23 consideration determined by a majority-in-interest of the members.

24 (2) Unless otherwise provided in the articles of organization or a written operating
25 agreement, no member shall have the right to dissent from a sale, lease, exchange,

1 or other disposition by a limited liability company of all or substantially all of its
 2 property outside the ordinary course of business.

3 ➔Section 5. KRS 275.500 is repealed and reenacted to read as follows:

4 (1) A limited liability company may acquire all or part of the outstanding shares of one
 5 (1) or more classes or series of a domestic or foreign corporation if the corporation,
 6 limited liability company, and a majority of their owners approve the exchange and,
 7 if the corporation is a foreign corporation, the share exchange is permitted under the
 8 laws of the state or country under which the foreign corporation is incorporated.

9 (2) The plan of share exchange shall set forth:

10 (a) The name of the corporation whose shares will be acquired and the name of
 11 the acquiring limited liability company;

12 (b) The terms and conditions of the exchange; and

13 (c) The manner and basis of exchanging the shares to be acquired for limited
 14 liability company interests, obligations, or other securities of the acquiring
 15 limited liability company or for cash or other property, in whole or part.

16 (3) The plan of share exchange may set forth other provisions relating to the exchange.

17 (4) This section shall not limit the power of a limited liability company to acquire all or
 18 part of the shares of one (1) or more classes or series of a corporation through a
 19 voluntary exchange or otherwise.

20 (5) Unless otherwise provided in the articles of organization, a written operating
 21 agreement, or a written plan of share exchange, no member of a limited liability
 22 company shall have the right to dissent from a share exchange.

23 ➔Section 6. KRS 275.505 is repealed and reenacted to read as follows:

24 (1) Unless otherwise provided in a written operating agreement, the plan of share
 25 exchange described in KRS 275.500 shall be considered for adoption by the
 26 members of the limited liability company.

27 (2) Each business entity that is a party to the share exchange shall approve the plan of

1 share exchange in the manner and by the vote required by the laws applicable to the
2 business entity.

3 ➔Section 7. KRS 275.510 is repealed and reenacted to read as follows:

4 (1) After a plan of share exchange has been approved in accordance with KRS 275.505,
5 the acquiring limited liability company shall deliver to the Secretary of State, for
6 filing, the articles of share exchange setting forth:

7 (a) The plan of share exchange; and

8 (b) A statement that the plan of share exchange was duly authorized and approved
9 by each of the constituent business entities in accordance with the laws
10 applicable to each business entity.

11 (2) A share exchange shall take effect upon the effective date of the articles of share
12 exchange.

13 ➔Section 8. KRS 275.515 is repealed and reenacted to read as follows:

14 When a share exchange takes effect, the shares of each acquired corporation shall be
15 exchanged as provided in the plan, and the former holders of the shares shall be entitled
16 only to the exchange rights provided in the articles of share exchange.

17 ➔Section 9. KRS 275.520 is repealed and reenacted to read as follows:

18 (1) A nonprofit limited liability company shall not have or issue membership interests
19 in the limited liability company, and no distribution shall be paid, and no part of the
20 income or profit of the limited liability company shall be distributed to its members
21 or managers.

22 (2) A nonprofit limited liability company may pay compensation in a reasonable
23 amount to its members or managers for services rendered and may confer benefits
24 upon its members in conformity with its purposes, and these payments or benefits
25 shall not be deemed to be a distribution of income or profit.

26 ➔Section 10. KRS 275.525 is repealed and reenacted to read as follows:

27 No loan shall be made by a nonprofit limited liability company to its members or

1 managers, and any member or manager who assents to or participates in the making of a
 2 loan violating this prohibition shall be liable to the limited liability company for the
 3 amount of the loan until its repayment.

4 ➔Section 11. KRS 275.530 is repealed and reenacted to read as follows:

5 The assets of a nonprofit limited liability company in the process of dissolution shall be
 6 applied and distributed as follows:

- 7 (1) All liabilities and obligations of the nonprofit limited liability company shall be
 8 paid and discharged or adequate provisions made for them;
- 9 (2) Assets received and held by the nonprofit limited liability company upon condition
 10 requiring return, transfer, or conveyance, which condition occurs by reason of the
 11 dissolution, shall be returned, transferred, or conveyed in accordance with the
 12 condition's requirements;
- 13 (3) Assets received and held by the nonprofit limited liability company subject to
 14 limitations permitting their use only for a nonprofit purpose, but not held upon a
 15 condition requiring return, transfer, or conveyance by reason of the dissolution,
 16 shall be transferred or conveyed to one (1) or more domestic or foreign nonprofit
 17 corporations, limited liability companies, societies, or organizations engaged in
 18 activities substantially similar to those of the dissolving nonprofit limited liability
 19 company, pursuant to a plan of distribution; and
- 20 (4) Any remaining assets may be distributed to those nonprofit corporations, limited
 21 liability companies, societies, or organizations as may be specified in a plan of
 22 dissolution, including those that are members of the nonprofit limited liability
 23 companies.

24 ➔Section 12. KRS 275.535 is repealed and reenacted to read as follows:

- 25 (1) In proceedings to liquidate the assets and affairs of a nonprofit limited liability
 26 company, the court shall have the power to issue injunctions and to appoint a
 27 receiver or receivers while the action is pending. The receivers shall have those

1 powers and duties as the court from time to time may direct, to take action to
2 preserve the corporate assets wherever situated, and to carry on the affairs of the
3 nonprofit limited liability company until a full hearing can be held.

4 (2) After holding a hearing, upon notice as the court may direct to be given to all parties
5 to the proceedings and to any other parties in interest designated by the court, the
6 court may appoint a liquidating receiver or receivers with authority to collect the
7 assets of the nonprofit limited liability company. The liquidating receiver or
8 receivers shall have authority, subject to the order of the court, to sell, convey, and
9 dispose of all or any part of the assets of the nonprofit limited liability company
10 wherever situated, either at public or private sale. The order appointing the
11 liquidating receiver or receivers shall state their powers and duties. The powers and
12 duties may be increased or diminished at any time during the proceedings.

13 (3) The assets of the nonprofit limited liability company or the proceeds resulting from
14 a sale, conveyance, or other disposition thereof shall be applied and distributed as
15 follows:

16 (a) All costs and expenses of the court proceedings and all liabilities and
17 obligations of the nonprofit limited liability company shall be paid, satisfied,
18 and discharged, or adequate provision for them shall be made;

19 (b) Assets held by the nonprofit limited liability company upon condition
20 requiring return, transfer, or conveyance, which condition occurs by reason of
21 the dissolution or liquidation, shall be returned, transferred, or conveyed in
22 accordance with the condition's requirements;

23 (c) Assets received and held by the nonprofit limited liability company subject to
24 limitations permitting their use only for a nonprofit purpose, but not held upon
25 a condition requiring return, transfer, or conveyance by reason of the
26 dissolution or liquidation, shall be transferred or conveyed to one (1) or more
27 domestic or foreign nonprofit limited liability companies, societies, or

1 organizations engaged in activities substantially similar to those of the
 2 dissolving or liquidating nonprofit limited liability company, as the court may
 3 direct; and

4 (d) Any remaining assets may be distributed to those persons, societies,
 5 organizations, or domestic or foreign limited liability companies, whether for
 6 profit or nonprofit, specified in the plan of distribution adopted or, if no plan
 7 of distribution has been adopted, as the court may direct.

8 (4) The court shall have power to allow, from time to time, as expenses of the
 9 liquidation, compensation to the receiver or receivers and to attorneys in the
 10 proceeding, and to direct the payment thereof out of the assets of the nonprofit
 11 limited liability company or the proceeds of any sale or disposition of the assets.

12 (5) A receiver of a nonprofit limited liability company appointed under the provisions
 13 of this section shall have authority to sue and defend in all courts in the receiver's
 14 own name as receiver of the nonprofit limited liability company. The court
 15 appointing the receiver shall have exclusive jurisdiction of the nonprofit limited
 16 liability company and its property, wherever situated.

17 ➔Section 13. KRS 275.540 is repealed and reenacted to read as follows:

18 A nonprofit limited liability company may be involuntarily dissolved by a decree of the
 19 Circuit Court in an action filed by the Attorney General when it is established that:

20 (1) The nonprofit limited liability company is guilty of abuse or misuse of its powers,
 21 privileges, or franchises, or the nonprofit limited liability company has become
 22 detrimental to the interest and welfare of this Commonwealth or its citizens; or

23 (2) The nonprofit limited liability company procured its articles of organization through
 24 fraud.

25 ➔Section 14. KRS 275.454 is repealed and reenacted to read as follows:

26 Any action brought by the Attorney General for the involuntary dissolution of a nonprofit
 27 limited liability company may be commenced in Franklin Circuit Court or in the Circuit

1 Court of the county in which the registered office of the nonprofit limited liability
2 company is situated.

3 ➔Section 15. KRS 275.177 is repealed and reenacted to read as follows:

4 If a written operating agreement contains a provision to the effect that any amendment to
5 the operating agreement of the limited liability company shall be in writing and adopted
6 in accordance with the provisions of the operating agreement, then the provision shall be
7 enforceable in accordance with its terms, and any agreement as to the conduct of the
8 business and affairs of the limited liability company which is not in writing and adopted
9 in accordance with the provisions of the operating agreement shall not be considered part
10 of the operating agreement and shall be void and unenforceable.

11 ➔Section 16. KRS 275.376 is repealed and reenacted to read as follows:

12 (1) A corporation may be converted to a limited liability company pursuant to this
13 section.

14 (2) The terms and conditions of the conversion of a corporation to a limited liability
15 company shall be set forth in a written plan of conversion and approved by the
16 board of directors and by the shareholders of the corporation.

17 (3) The plan of conversion shall set forth:

18 (a) The name of the corporation planning to convert;

19 (b) The terms and conditions of the conversion, including the articles of
20 organization and the written operating agreement, if any, of the limited
21 liability company into which the corporation will convert; and

22 (c) The manner and basis of converting the shares of the corporation into
23 membership interests, obligations, or other securities of the limited liability
24 company or into cash or other property in whole or part.

25 (4) The plan of conversion may set forth any other provision relating to the conversion.

26 (5) For a plan of conversion to be approved:

27 (a) The board of directors shall recommend the plan of conversion to the

1 shareholders, unless the board of directors determines that, because of conflict
2 of interest or other special circumstances, it should make no recommendation
3 and communicates the basis for its determination to the shareholders with a
4 plan; and

5 (b) The shareholders entitled to vote shall approve the plan.

6 (6) The board of directors may condition its submission of the proposed conversion on
7 any basis.

8 (7) The corporation shall notify each shareholder, whether or not entitled to vote, of the
9 proposed shareholders' meeting in accordance with KRS 271B.7-050. The notice
10 shall also state that the purpose, or one (1) of the purposes, of the meeting is to
11 consider the plan of conversion and contain or be accompanied by a copy or
12 summary of the plan.

13 (8) Unless KRS Chapter 271B, the articles of incorporation, or the board of directors
14 acting pursuant to subsection (6) of this section, require a greater vote or vote by
15 voting groups, the plan of conversion to be authorized shall be approved by each
16 voting group entitled to vote separately on the plan by a majority of all the votes
17 entitled to be cast on the plan by that voting group.

18 (9) Separate voting by voting groups shall be required on a plan of conversion if the
19 plan contains a provision that, if contained in a proposed amendment to the articles
20 of incorporation, would require action by one (1) or more separate voting groups on
21 the proposed amendment under KRS 271B.10-040.

22 (10) After a conversion is authorized, and at any time before articles of organization are
23 filed, the planned conversion may be abandoned subject to any contractual rights,
24 without further shareholder action, in accordance with the procedure set forth in the
25 plan of conversion or, if none is set forth, in the manner determined by the board of
26 directors.

27 (11) After the conversion is approved, the corporation shall file articles of organization

1 with the office of the Secretary of State that satisfy the requirements of KRS
2 275.025 and also include:

- 3 (a) A statement that the corporation was converted to a limited liability company;
- 4 (b) Its former name;
- 5 (c) A statement that any assumed name held by the corporation has been
6 canceled; and
- 7 (d) The designation, number of outstanding shares, and number of votes to be cast
8 by each voting group entitled to vote separately on the plan of conversion and
9 either the total number of undisputed votes cast for the plan separately by each
10 voting group or a statement that the number cast for the plan by each voting
11 group was sufficient for approval by that voting group.

12 (12) The conversion shall take effect when the articles of organization are filed with the
13 office of the Secretary of State or, subject to KRS 275.060, at a later date specified
14 in the articles of organization.

15 ➔Section 17. KRS 275.377 is repealed and reenacted to read as follows:

- 16 (1) A corporation that has been converted pursuant to this chapter shall be for all
17 purposes the same entity that existed before the conversion.
- 18 (2) When a conversion takes effect:
 - 19 (a) All property and contract rights owned by, and all rights, privileges, and
20 immunities of the converting corporation shall remain vested in the converted
21 limited liability company without assignment, reversion, or impairment;
 - 22 (b) All obligations of the converting corporation shall continue as obligations of
23 the converted limited liability company;
 - 24 (c) An action or proceeding pending against the converting corporation may be
25 continued as if the conversion had not occurred, and the name of the
26 converted limited liability company may be substituted in any pending action
27 or proceeding for the name of the converting corporation; and

- 1 (d) The written operating agreement of the converted limited liability company
 2 shall be binding upon each person who becomes a member of the limited
 3 liability company.

4 ➔Section 18. KRS 275.372 is repealed and reenacted to read as follows:

- 5 (1) A limited liability company may convert into a limited partnership as provided in
 6 KRS 362.2-1102(4).

- 7 (2) The terms and conditions of the conversion of a limited liability company into a
 8 limited partnership shall be approved by all of the members notwithstanding any
 9 provision to the contrary in the operating agreement.

10 ➔Section 19. KRS 386.382 is repealed and reenacted to read as follows:

- 11 (1) Except as authorized by subsections (2) and (3) of this section, the name of a
 12 business trust or foreign business trust qualified to transact business in this
 13 Commonwealth shall be distinguishable from any name of record with the Secretary
 14 of State.

- 15 (2) A business trust or foreign business trust may apply to the Secretary of State for
 16 authorization to use a name that is not distinguishable upon the Secretary of State's
 17 records from one (1) or more of the names described in subsection (1) of this
 18 section. The Secretary of State shall authorize use of the name applied for if:

- 19 (a) The other business entity consents to the use in writing and submits an
 20 undertaking in form satisfactory to the Secretary of State to change its name to
 21 a name that is distinguishable upon the records of the Secretary of State from
 22 the name of the applying limited liability company; or

- 23 (b) The applicant delivers to the Secretary of State a certified copy of the final
 24 judgment of a court of competent jurisdiction establishing the applicant's right
 25 to use the name applied for in this Commonwealth.

- 26 (3) A business trust or foreign business trust may use the name, including the fictitious
 27 name, of another business entity that is used in this Commonwealth if the other

1 business entity is organized or authorized to transact business in this
 2 Commonwealth, and the business trust or foreign business trust:

- 3 (a) Has merged with the other business entity;
- 4 (b) Has been formed by reorganization of the other business entity; or
- 5 (c) Has acquired all or substantially all of the assets, including the business name,
 6 of the other business entity.

7 (4) This chapter shall not control the use of assumed names.

8 (5) The filing of a declaration of trust or an application to transact authority in the
 9 Commonwealth under the particular name of a business trust or foreign business
 10 trust shall not automatically prevent the use of that name or protect that name from
 11 use by other persons.

12 ➔Section 20. KRS 386.384 is repealed and reenacted to read as follows:

13 (1) Each domestic business trust and each foreign business trust authorized to transact
 14 business in the Commonwealth shall continuously maintain in this Commonwealth:

- 15 (a) A registered office that may be the same as any of its places of business; and
- 16 (b) A registered agent who shall be either:

17 1. An individual who is a resident of this Commonwealth and whose
 18 business office is identical with the registered office;

19 2. A domestic corporation, limited liability company, or not-for-profit
 20 corporation whose business office is identical with the registered office;

21 or

22 3. A foreign corporation, limited liability company, or not-for-profit
 23 corporation authorized to transact business in this Commonwealth
 24 whose business office is identical with the registered office.

25 (2) Unless the registered agent signs the document making the appointment, the
 26 appointment of a registered agent or a successor registered agent on whom process
 27 may be served shall not be effective until the agent delivers a statement in writing to

1 the Secretary of State accepting the appointment.

2 ➔Section 21. KRS 386.386 is repealed and reenacted to read as follows:

- 3 (1) A business trust, or a foreign business trust authorized to transact business in the
4 Commonwealth, may change its registered office or registered agent, or both, upon
5 filing in the office of the Secretary of State a statement of change on a form
6 supplied by the Secretary of State that sets forth:
- 7 (a) The name of the business trust or foreign business trust;
 - 8 (b) The street address of its current registered office;
 - 9 (c) If the current registered office is to be changed, the street address of the new
10 registered office;
 - 11 (d) The name of its current registered agent;
 - 12 (e) If the current registered agent is to be changed, the name of the new registered
13 agent and the new registered agent's written consent; and
 - 14 (f) That after the change or changes are made, the street addresses of its
15 registered office and the business office of its registered agent will be
16 identical.
- 17 (2) If a registered agent changes the street address of the registered agent's business
18 office to another place within this Commonwealth, the registered agent shall change
19 the street address of the registered office of any business trust or foreign business
20 trust of which the registered agent is a registered agent by notifying the business
21 trust or foreign business trust in writing of the change, and delivering to the
22 Secretary of State, for filing, a statement that complies with the requirements of
23 subsection (1) of this section and recites that the business trust or foreign business
24 trust has been notified of the change.
- 25 (3) The change of address of the registered office or registered agent shall be effective
26 on delivery of the statement to the Secretary of State. The appointment of a new
27 registered agent shall be effective on delivery of the statement to the Secretary of

1 State and on receipt by the Secretary of State of evidence that the new registered
2 agent has accepted appointment pursuant to KRS 386.384.

3 ➔Section 22. KRS 386.388 is repealed and reenacted to read as follows:

4 (1) A registered agent may resign as registered agent by signing and delivering to the
5 Secretary of State for filing the executed original and two (2) exact or conformed
6 copies of a statement of resignation. The statement may also include a statement
7 that the registered office is also discontinued.

8 (2) After filing the statement, the Secretary of State shall mail one (1) copy to the
9 registered office, if not discontinued, and the other copy to the business trust at its
10 principal office.

11 (3) The agency appointment shall be terminated, and the registered office discontinued
12 if so provided, on the thirty-first day after the date on which the statement was filed.

13 ➔Section 23. KRS 386.441 is repealed and reenacted to read as follows:

14 (1) A domestic or foreign business trust's registered agent shall be the business trust's
15 agent for service of process, notice, or demand required or permitted by law to be
16 served on the business trust.

17 (2) If a domestic or foreign business trust has no registered agent in this
18 Commonwealth, or the registered agent cannot with reasonable diligence be served,
19 the business trust may be served by registered or certified mail, return receipt
20 requested, addressed to the business trust at its principal office. Service shall be
21 perfected under this subsection at the earliest of:

22 (a) The date the business trust receives the mail;

23 (b) The date shown on the return receipt, if signed on behalf of the business trust;
24 or

25 (c) Five (5) days after its deposit in the United States mail, as evidenced by the
26 postmark, if mailed postpaid and correctly addressed.

27 (3) This section shall not prescribe the only means, or necessarily the required means,

1 of serving a domestic or foreign business trust.

2 ➔Section 24. KRS 386.392 is repealed and reenacted to read as follows:

3 (1) Each domestic business trust, and each foreign business trust authorized to transact
4 business in this Commonwealth, shall deliver to the Secretary of State, for filing, an
5 annual report that sets forth:

6 (a) The name of the business trust and the state or country under whose law it is
7 organized;

8 (b) The address of its registered office and the name of its registered agent at that
9 office in this state;

10 (c) The address of its principal office; and

11 (d) The names and business addresses of its trustees.

12 (2) Information in the annual report shall be current as of the date the annual report is
13 executed on behalf of the business trust.

14 (3) With respect to a business trust organized or a foreign business trust first qualifying
15 to transact business on or after June 26, 2007, the first annual report shall be
16 delivered to the Secretary of State between January 1 and June 30 of the year
17 following the calendar year in which a domestic business trust was organized or a
18 foreign business trust was authorized to transact business. A business trust
19 organized or a foreign business trust qualified to transact business on or before June
20 26, 2007, shall file its first annual report between January 1 and June 30, 2008.
21 Subsequent annual reports shall be delivered to the Secretary of State between
22 January 1 and June 30 of the following calendar years.

23 (4) If an annual report does not contain the information required by this section, the
24 Secretary of State shall promptly notify the reporting domestic or foreign business
25 trust in writing and return the report to it for correction.

26 (5) A domestic or foreign business trust may amend the information in its last filed
27 annual report by delivery to the Secretary of State of an amendment to the annual

1 report on such form as is provided by the Secretary of State.

2 (6) The filing fee for an annual report or an amended annual report is fifteen dollars
3 (\$15).

4 ➔Section 25. KRS 386.432 is repealed and reenacted to read as follows:

5 (1) The Secretary of State may commence a proceeding to administratively dissolve a
6 business trust if:

7 (a) The business trust does not deliver its annual report to the Secretary of State
8 within sixty (60) days after the annual report is due;

9 (b) The business trust is without a registered agent or registered office in
10 Kentucky for at least sixty (60) days; or

11 (c) The business trust does not notify the Secretary of State within sixty (60) days
12 after its registered agent or registered office has been changed, its registered
13 agent has resigned, or its registered office has been discontinued.

14 (2) (a) If the Secretary of State determines that one (1) or more grounds exist under
15 subsection (1) of this section for dissolving a business trust, the Secretary of
16 State shall serve the business trust with written notice of the determination.

17 (b) If the business trust does not correct each ground for dissolution or
18 demonstrate to the reasonable satisfaction of the Secretary of State that each
19 ground determined by the Secretary of State does not exist within sixty (60)
20 days from the date on which notice was mailed, the Secretary of State shall
21 administratively dissolve the business trust by signing a certificate of
22 dissolution that states the ground or grounds for dissolution and its effective
23 date. The Secretary of State shall file the original of the certificate and serve a
24 copy on the business trust by mailing the notice by first class mail to the
25 business trust at its registered office.

26 (3) (a) A business trust administratively dissolved under subsection (2) of this section
27 may apply to the Secretary of State for reinstatement at any time after the

1 effective date of dissolution. The application shall:

- 2 1. State the name of the business trust and the effective date of its
3 administrative dissolution;
- 4 2. State that the ground or grounds for dissolution either did not exist or
5 have been eliminated;
- 6 3. Contain a certificate from the Kentucky Department of Revenue stating
7 that all taxes owed by the business trust have been paid; and
- 8 4. Be accompanied by the reinstatement penalty and the current fee on
9 filing each delinquent report.

10 (b) If the Secretary of State determines that the application contains the
11 information required by paragraph (a) of this subsection and that the
12 information is correct, the Secretary of State shall:

- 13 1. Cancel the certificate of dissolution and prepare a certificate of existence
14 that states the determination and the effective date of existence; and
- 15 2. Serve a copy on the business trust.

16 (c) When the reinstatement is effective, the reinstatement shall relate back to and
17 take effect as of the effective date of the administrative dissolution, and the
18 business trust shall resume carrying on business as if the administrative
19 dissolution had never occurred.

20 (4) (a) If the Secretary of State denies a business trust's application for reinstatement
21 following administrative dissolution, the Secretary of State shall serve the
22 business trust with a written notice that explains the reason or reasons for
23 denial by mailing notice by first-class mail to the business trust at its
24 registered office or, if none, to the last principal office identified on the most
25 recent annual report.

26 (b) The business trust may appeal the denial of reinstatement to the Circuit Court
27 of the county where the business trust's principal office, or, if there is none in

Kentucky, its registered office in Kentucky, is located within thirty (30) days after service of the notice of denial by doing the following:

1. Filing a petition with the court to set aside the dissolution; and
2. Attaching to the petition a copy of the Secretary of State's certificate of dissolution, the business trust's application for reinstatement, and the Secretary of State's notice of denial.

(c) The court may order the Secretary of State to reinstate the dissolved limited company or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as are other civil proceedings.

➔Section 26. KRS 386.4420 is repealed and reenacted to read as follows:

(1) Subject to the Constitution of this Commonwealth:

(a) Except as provided in subsection (2) of this section, the laws of the state or other jurisdiction under which a foreign business trust is organized shall govern its organization and internal affairs, including the liability of its trustees and beneficial owners for the debts and obligations of the business trust and the inspection by a trustee or a beneficial owner of the books and records of the business trust; and

(b) A foreign business trust shall not be denied registration by reason of any difference between the laws of another jurisdiction under which a foreign business trust is organized and the laws of this Commonwealth.

(2) A certificate of authority obtained pursuant to this chapter shall not authorize a foreign business trust to exercise any powers or engage in any business that a domestic business trust is forbidden to exercise or engage in by the laws of this Commonwealth.

➔Section 27. KRS 386.4422 is repealed and reenacted to read as follows:

(1) A foreign business trust shall not transact business in this Commonwealth until it obtains a certificate of authority from the Secretary of State.

- 1 (2) The following activities, among others, shall not constitute transacting business
2 within the meaning of subsection (1) of this section:
- 3 (a) Maintaining, defending, or settling any action, suit, or proceeding;
 - 4 (b) Holding meetings of its members or managers or carrying on other activities
5 concerning its internal affairs;
 - 6 (c) Maintaining bank accounts;
 - 7 (d) Maintaining offices or agencies for the transfer, exchange, and registration of
8 the business trust's securities, or maintaining trustees or depositories with
9 respect to those securities;
 - 10 (e) Selling through independent contractors;
 - 11 (f) Soliciting or obtaining orders, whether by mail, through employees or agents,
12 or otherwise, if the orders require acceptance outside this Commonwealth
13 before they become contracts;
 - 14 (g) Creating or acquiring indebtedness, mortgages, and security interests in real or
15 personal property;
 - 16 (h) Securing or collecting debts or enforcing mortgages and security interests in
17 property securing the debts;
 - 18 (i) Owning, without more, real or personal property;
 - 19 (j) Conducting an isolated transaction that is completed within thirty (30) days
20 and that is not one (1) in the course of repeated transactions of a like nature; or
 - 21 (k) Transacting business in interstate commerce.
- 22 (3) The list of activities in subsection (2) of this section shall not be considered
23 exhaustive. This section shall not apply in determining the contracts or activities
24 that may subject a foreign business trust to service of process or taxation in this
25 Commonwealth or to regulation under any other law of this Commonwealth.
- 26 (4) The term "transacting business" as used in this section shall have no effect on
27 personal jurisdiction under KRS 454.210.

1 ➔ Section 28. KRS 386.4424 is repealed and reenacted to read as follows:

2 (1) A foreign business trust transacting business in this Commonwealth without a
3 certificate of authority shall not maintain an action, suit, or proceeding in any court
4 in this Commonwealth until it obtains a certificate of authority.

5 (2) The successor to a business trust that transacted business in this Commonwealth
6 without a certificate of authority and the assignee of a cause of action arising out of
7 that business shall not maintain a proceeding based on that cause of action in any
8 court in this Commonwealth until the foreign business trust or its successor obtains
9 a certificate of authority.

10 (3) A court may stay a proceeding commenced by a foreign business trust, its successor,
11 or assignee, until it determines whether the foreign business trust or its successor
12 requires a certificate of authority. If it so determines, the court may further stay the
13 proceeding until the business trust or its successor obtains the certificate of
14 authority.

15 (4) A foreign business trust shall be liable for a civil penalty of two dollars (\$2) for
16 each day, but not to exceed a total of five hundred dollars (\$500) for each year, it
17 transacts business in this Commonwealth without a certificate of authority. The
18 Attorney General may collect all penalties due under this subsection.

19 (5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign
20 business trust to obtain a certificate of authority shall not impair the validity of any
21 contract or act of the foreign business trust or prevent it from defending any
22 proceeding in this Commonwealth.

23 ➔ Section 29. KRS 386.4426 is repealed and reenacted to read as follows:

24 (1) A foreign business trust may apply for a certificate of authority to transact business
25 in this Commonwealth by delivering an application to the Secretary of State for
26 filing. The application shall set forth:

27 (a) The name of the foreign business trust, or if its name is unavailable for use in

1 this Commonwealth, a name that satisfies the requirements of KRS 386.382;

2 (b) The name of the state or country under whose law it is organized;

3 (c) Its date of organization and, if the business trust has a specific date of
4 dissolution, the latest date upon which it is to dissolve;

5 (d) The street address of the office required to be maintained in the state or other
6 jurisdiction of its formation by the laws of that state or jurisdiction or, if not
7 so required, of the principal office of the foreign business trust;

8 (e) The address of its registered office in this Commonwealth and the name of its
9 registered agent at that office;

10 (f) The names and usual business addresses of its current trustees; and

11 (g) A statement that, as of the date of filing, the foreign business trust validly
12 exists as a business trust under the laws of the jurisdiction of its organization.

13 (2) A written statement of the initial registered agent consenting to serve in that
14 capacity shall accompany the application for a certificate of authority.

15 ➔Section 30. KRS 386.4428 is repealed and reenacted to read as follows:

16 (1) A foreign business trust authorized to transact business in this Commonwealth shall
17 obtain an amended certificate of authority from the Secretary of State if it changes:

18 (a) Its name;

19 (b) The latest date on which it is to dissolve; or

20 (c) The state or country of its organization.

21 (2) The requirements of KRS 386.4426 for obtaining an original certificate of authority
22 shall apply to obtaining an amended certificate under this section.

23 ➔Section 31. KRS 386.4430 is repealed and reenacted to read as follows:

24 (1) A certificate of authority shall authorize the foreign business trust to which it is
25 issued to transact business in this Commonwealth subject to the right of the
26 Commonwealth to revoke the certificate as provided in this chapter.

27 (2) A foreign business trust with a valid certificate of authority shall have the same but

1 no greater rights as, and shall have the same but no greater privileges as, and except
2 as otherwise provided by this chapter shall be subject to the same duties,
3 restrictions, penalties, and liabilities now or later imposed on, a domestic business
4 trust.

5 (3) This chapter shall not authorize this Commonwealth to regulate the organization or
6 internal affairs of a foreign business trust authorized to transact business in this
7 Commonwealth.

8 ➔Section 32. KRS 386.4432 is repealed and reenacted to read as follows:

9 (1) If the name of a foreign business trust does not satisfy the requirements of KRS
10 386.382, the foreign business trust, to obtain or maintain a certificate of authority to
11 transact business in this Commonwealth, may use a fictitious name to transact
12 business in this Commonwealth if its real name is unavailable and it delivers to the
13 Secretary of State for filing a certificate by a trustee that the business trust has
14 adopted the fictitious name.

15 (2) Except as authorized by subsections (3) and (4) of this section, the name, including
16 a fictitious name, of a foreign business trust shall be distinguishable from the name
17 of any other business entity upon the records of the Secretary of State.

18 (3) A foreign business trust may apply to the Secretary of State for authorization to use
19 in this Commonwealth the name of another business entity, organized or authorized
20 to transact business in this Commonwealth, that is not distinguishable upon the
21 Secretary's records from the name applied for. The Secretary of State shall authorize
22 use of the name applied for if:

23 (a) The business entity consents to the use in writing and submits an undertaking
24 in form satisfactory to the Secretary of State to change its name to a name that
25 is distinguishable upon the records of the Secretary of State from the name of
26 the applying business trust; or

27 (b) The applicant delivers to the Secretary of State a certified copy of a final

1 judgment of a court of competent jurisdiction establishing the applicant's right
2 to use the name applied for in this Commonwealth.

3 (4) A foreign business trust may use in this Commonwealth the name, including the
4 fictitious name, of another business entity that is used in this Commonwealth if the
5 business entity is organized or authorized to transact business in this
6 Commonwealth and the foreign business trust:

- 7 (a) Has merged with the other business entity;
- 8 (b) Has been formed by reorganization of the business entity; or
- 9 (c) Has acquired all or substantially all of the assets, including the name, of the
10 other business entity.

11 (5) If a foreign business trust authorized to transact business in this Commonwealth
12 changes its name to one that does not satisfy the requirements of this section, it shall
13 not transact business in this Commonwealth under the changed name until it adopts
14 a name satisfying the requirements of this section and obtains an amended
15 certificate of authorization under KRS 386.4428.

16 ➔Section 33. KRS 386.4434 is repealed and reenacted to read as follows:

17 Each foreign business trust authorized to transact business in this Commonwealth shall
18 continuously maintain in this Commonwealth:

- 19 (1) A registered office that may be the same as any of its places of business; and
- 20 (2) A registered agent, who may be:
 - 21 (a) An individual who resides in this Commonwealth and whose business office
22 is identical with the registered office;
 - 23 (b) A domestic corporation, not-for-profit corporation, or limited liability
24 company whose business office is identical with the registered office; or
 - 25 (c) A foreign corporation, not-for-profit corporation, or limited liability company
26 authorized to transact business in this Commonwealth whose business office
27 is identical with the registered office.

- 1 (3) The registered agent shall execute and deliver to the Secretary of State a document
2 accepting the agency appointment, and the appointment of the agent shall not be
3 effective until delivered to the Secretary of State.

4 ➔Section 34. KRS 386.4436 is repealed and reenacted to read as follows:

- 5 (1) A foreign business trust authorized to transact business in this Commonwealth may
6 change its registered office or registered agent by delivering to the Secretary of State
7 for filing a statement of change that sets forth:

8 (a) Its name;

9 (b) The street address of its current registered office;

10 (c) If the current registered office is to be changed, the street address of its new
11 registered office;

12 (d) The name of its current registered agent;

13 (e) If the current registered agent is to be changed, the name of its new registered
14 agent and the new agent's written consent, either on the statement or attached
15 to it, to the appointment; and

16 (f) That after the change or changes are made, the street addresses of its
17 registered office and the business office of its registered agent will be
18 identical.

- 19 (2) If a registered agent changes the street address of its business office, the agent shall
20 change the street address of the registered office of any foreign business trust for
21 which the agent is the registered agent by notifying the business trust in writing of
22 the change and signing, either manually or in facsimile, and delivering to the
23 Secretary of State for filing a statement of change that complies with the
24 requirements of subsection (1) of this section and recites that the business trust has
25 been notified of the change.

26 ➔Section 35. KRS 386.4438 is repealed and reenacted to read as follows:

- 27 (1) The registered agent of a foreign business trust may resign its agency appointment

1 by signing and delivering to the Secretary of State, for filing, the original and two
 2 (2) exact or conformed copies of a statement of resignation. The statement of
 3 resignation may include a statement that the registered office is also discontinued.

4 (2) After filing the statement, the Secretary of State shall attach the filing receipt to one
 5 (1) copy and mail the copy and receipt to the registered office, if not discontinued.
 6 The Secretary of State shall mail the other copy to the foreign business trust at its
 7 principal office address shown in its most recent annual report.

8 (3) The agency appointment shall be terminated, and the registered office discontinued
 9 if so provided, on the thirty-first day after the date on which the statement was filed.
 10 A foreign business trust that fails to maintain a registered agent in this
 11 Commonwealth shall be subject to revocation of its certificate of authority under
 12 KRS 386.4444.

13 ➔Section 36. KRS 386.4440 is repealed and reenacted to read as follows:

14 (1) The registered agent of a foreign business trust authorized to transact business in
 15 this Commonwealth shall be the company's agent for service of process, notice, or
 16 demand required or permitted by law to be served on the foreign business trust.

17 (2) A foreign business trust may be served by registered or certified mail, return receipt
 18 requested, addressed to the appropriate representative of the foreign business trust at
 19 its principal office shown in its application for a certificate of authority or in its
 20 most recent annual report, if the foreign business trust:

21 (a) Has no registered agent or its registered agent cannot with reasonable
 22 diligence be served;

23 (b) Has withdrawn from transacting business in this Commonwealth under KRS
 24 386.4442; or

25 (c) Has had its certificate of authority revoked under KRS 386.4446.

26 (3) Service is perfected under subsection (2) of this section at the earliest of:

27 (a) The date the foreign business trust receives service by mail;

1 (b) The date shown on the return receipt, if signed on behalf of the foreign
2 business trust; or

3 (c) Five (5) days after its deposit in the United States mail, as evidenced by the
4 postmark, if mailed postpaid and correctly addressed.

5 (4) This section shall not prescribe the only means, or necessarily the required means,
6 of serving a foreign business trust.

7 ➔Section 37. KRS 386.4442 is repealed and reenacted to read as follows:

8 (1) A foreign business trust authorized to transact business in this Commonwealth shall
9 not withdraw from this Commonwealth until it obtains a certificate of withdrawal
10 from the Secretary of State.

11 (2) A foreign business trust authorized to transact business in this Commonwealth may
12 apply for a certificate of withdrawal by delivering an application to the Secretary of
13 State for filing. The application shall set forth:

14 (a) The name of the foreign business trust and the name of the state or country
15 under whose law it is organized;

16 (b) A statement that it is not transacting business in this Commonwealth and that
17 it surrenders its authority to transact business in this Commonwealth;

18 (c) A statement that it revokes the authority of its registered agent to accept
19 service on its behalf and appoints the Secretary of State as its agent for service
20 of process in any proceeding based on a cause of action arising during the time
21 it was authorized to transact business in this Commonwealth;

22 (d) A mailing address to which the Secretary of State may mail a copy of any
23 process served on the Secretary of State under subsection (2)(c) or (3) of this
24 section; and

25 (e) A commitment to notify the Secretary of State in the future of any change in
26 its mailing address.

27 (3) After the withdrawal of the business trust is effective, service of process on the

1 Secretary of State under this section shall be service on the foreign business trust.
 2 Upon receipt of process, the Secretary of State shall mail a copy of the process to
 3 the foreign business trust at the mailing address set forth under subsection (2) of this
 4 section.

5 ➔Section 38. KRS 386.4444 is repealed and reenacted to read as follows:

6 The Secretary of State may commence a proceeding under KRS 386.4446 to revoke the
 7 certificate of authority of a foreign business trust authorized to transact business in this
 8 Commonwealth if:

- 9 (1) The foreign business trust does not file its annual report to the Secretary of State
 10 within sixty (60) days after it is due;
- 11 (2) The foreign business trust is without a registered agent or registered office in this
 12 Commonwealth for sixty (60) days or more;
- 13 (3) The foreign business trust does not inform the Secretary of State under KRS
 14 386.4434 and 386.4436 that its registered agent or registered office has changed,
 15 that its registered agent has resigned, or that its registered office has been
 16 discontinued within sixty (60) days of the change, resignation, or discontinuance;
- 17 (4) A trustee of the business trust or person organizing the foreign business trust signed
 18 a document the trustee or person knew was false in any material respect with intent
 19 that the document be delivered to the Secretary of State for filing; or
- 20 (5) The Secretary of State receives a duly authenticated certificate from the Secretary of
 21 State or other official having custody of business trust records in the state or country
 22 under whose law the foreign business trust is organized stating that it has been
 23 dissolved or disappeared as the result of a merger or other event.

24 ➔Section 39. KRS 386.4446 is repealed and reenacted to read as follows:

- 25 (1) If the Secretary of State determines that one (1) or more grounds exist under KRS
 26 386.4444 for revocation of a certificate of authority, the Secretary of State shall
 27 serve the foreign business trust with written notice of its determination by mailing

1 the notice by first-class mail to the foreign business trust at its principal place of
2 business address as shown on the records of the Secretary of State.

3 (2) If the foreign business trust does not correct each ground for revocation or
4 demonstrate to the reasonable satisfaction of the Secretary of State that each ground
5 determined by the Secretary of State does not exist within sixty (60) days after the
6 mailing of the notice, the Secretary of State shall revoke the foreign business trust's
7 certificate of authority by signing a certificate of revocation that recites the ground
8 or grounds for revocation and its effective date. The Secretary of State shall file the
9 original of the certificate and serve a copy to the foreign business trust by mailing
10 notice by first-class mail to the foreign business trust at its principal place of
11 business address as shown on the records of the Secretary of State.

12 (3) The authority of a foreign business trust to transact business in this Commonwealth
13 shall cease on the date shown on the certificate of revocation.

14 (4) The Secretary of State's revocation of a foreign business trust's certificate of
15 authority shall have the effect of appointing the Secretary of State as the foreign
16 business trust's agent for service of process in any proceeding based on a cause of
17 action which arose during the time the foreign business trust was authorized to
18 transact business in this Commonwealth. Service of process on the Secretary of
19 State under this subsection shall be service on the foreign business trust. Upon
20 receipt of process, the Secretary of State shall mail a copy of the process to the
21 appropriate representative of the foreign business trust at its principal office as
22 shown in its most recent annual report or in any subsequent communication
23 received from the foreign business trust stating the current mailing address of its
24 principal office, or, if none are on file, in its application for a certificate of authority.

25 (5) Revocation of a foreign business trust's certificate of authority shall not terminate
26 the authority of the registered agent of the foreign business trust.

27 ➔Section 40. KRS 386.4448 is repealed and reenacted to read as follows:

1 (1) A foreign business trust may appeal the Secretary of State's revocation of its
 2 certificate of authority to the Franklin Circuit Court within thirty (30) days after the
 3 service of certificate of revocation. The foreign business trust may petition the court
 4 to set aside the revocation by attaching to the petition copies of its certificate of
 5 authority and the Secretary of State's certificate of revocation.

6 (2) The court may summarily order the Secretary of State to reinstate the certificate of
 7 authority or may take any other action the court considers appropriate.

8 (3) The court's final decision may be appealed as in other civil proceedings.

9 ➔Section 41. KRS 14.105 is repealed and reenacted to read as follows:

10 (1) The Secretary of State may accept electronic signatures to meet the filing
 11 requirements for a:

12 (a) Corporation as required in KRS Chapter 271B;

13 (b) Nonprofit corporation as required in KRS Chapter 273;

14 (c) Professional service corporation as required in KRS Chapter 274;

15 (d) Limited liability company as required in KRS Chapter 275;

16 (e) Partnership as required in KRS Chapter 362;

17 (f) Partnership as required in Subchapter 1 of KRS Chapter 362;

18 (g) Limited partnership as required in Subchapter 2 of KRS Chapter 362;

19 (h) Cooperative corporations and associations as required in KRS Chapter 272;

20 (i) Business trust as required in KRS Chapter 386;

21 (j) Rural electric and rural telephone cooperative corporation as required in KRS
 22 Chapter 279; and

23 (k) Assumed name filing under KRS Chapter 365.

24 (2) The electronic signature shall satisfy the requirements set forth in KRS 369.101 to
 25 369.120.

26 ➔Section 42. KRS 141.010 is repealed and reenacted to read as follows:

27 As used in this chapter, unless the context requires otherwise:

- 1 (1) "Commissioner" means the commissioner of the Department of Revenue;
- 2 (2) "Department" means the Department of Revenue;
- 3 (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December
4 31, 2006, exclusive of any amendments made subsequent to that date, other than
5 amendments that extend provisions in effect on December 31, 2006, that would
6 otherwise terminate, and as modified by KRS 141.0101, except that for property
7 placed in service after September 10, 2001, only the depreciation and expense
8 deductions allowed under Sections 168 and 179 of the Internal Revenue Code in
9 effect on December 31, 2001, exclusive of any amendments made subsequent to
10 that date, shall be allowed, and including the provisions of the Military Family Tax
11 Relief Act of 2003, Pub. L. No. 108-121, effective on the dates specified in that
12 Act;
- 13 (4) "Dependent" means those persons defined as dependents in the Internal Revenue
14 Code;
- 15 (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal
16 Revenue Code;
- 17 (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal
18 Revenue Code;
- 19 (7) "Individual" means a natural person;
- 20 (8) "Modified gross income" means the greater of:
 - 21 (a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code
22 of 1986, including any subsequent amendments in effect on December 31 of
23 the taxable year, and adjusted as follows:
 - 24 1. Include interest income derived from obligations of sister states and
25 political subdivisions thereof; and
 - 26 2. Include lump-sum pension distributions taxed under the special
27 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or

- 1 (b) Adjusted gross income as defined in subsection (10) of this section and
2 adjusted to include lump-sum pension distributions taxed under the special
3 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);
- 4 (9) "Gross income," in the case of taxpayers other than corporations, means "gross
5 income" as defined in Section 61 of the Internal Revenue Code;
- 6 (10) "Adjusted gross income," in the case of taxpayers other than corporations, means
7 gross income as defined in subsection (9) of this section minus the deductions
8 allowed individuals by Section 62 of the Internal Revenue Code and as modified by
9 KRS 141.0101 and adjusted as follows, except that deductions shall be limited to
10 amounts allocable to income subject to taxation under the provisions of this chapter,
11 and except that nothing in this chapter shall be construed to permit the same item to
12 be deducted more than once:
- 13 (a) Exclude income that is exempt from state taxation by the Kentucky
14 Constitution and the Constitution and statutory laws of the United States and
15 Kentucky;
- 16 (b) Exclude income from supplemental annuities provided by the Railroad
17 Retirement Act of 1937 as amended and which are subject to federal income
18 tax by Public Law 89-699;
- 19 (c) Include interest income derived from obligations of sister states and political
20 subdivisions thereof;
- 21 (d) Exclude employee pension contributions picked up as provided for in KRS
22 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and
23 161.540 upon a ruling by the Internal Revenue Service or the federal courts
24 that these contributions shall not be included as gross income until such time
25 as the contributions are distributed or made available to the employee;
- 26 (e) Exclude Social Security and railroad retirement benefits subject to federal
27 income tax;

- 1 (f) Include, for taxable years ending before January 1, 1991, all overpayments of
2 federal income tax refunded or credited for taxable years;
- 3 (g) Deduct, for taxable years ending before January 1, 1991, federal income tax
4 paid for taxable years ending before January 1, 1990;
- 5 (h) Exclude any money received because of a settlement or judgment in a lawsuit
6 brought against a manufacturer or distributor of "Agent Orange" for damages
7 resulting from exposure to Agent Orange by a member or veteran of the
8 Armed Forces of the United States or any dependent of such person who
9 served in Vietnam;
- 10 (i) 1. For taxable years ending prior to December 31, 2005, exclude the
11 applicable amount of total distributions from pension plans, annuity
12 contracts, profit-sharing plans, retirement plans, or employee savings
13 plans.
14 The "applicable amount" shall be:
 - 15 a. Twenty-five percent (25%), but not more than six thousand two
16 hundred fifty dollars (\$6,250), for taxable years beginning after
17 December 31, 1994, and before January 1, 1996;
 - 18 b. Fifty percent (50%), but not more than twelve thousand five
19 hundred dollars (\$12,500), for taxable years beginning after
20 December 31, 1995, and before January 1, 1997;
 - 21 c. Seventy-five percent (75%), but not more than eighteen thousand
22 seven hundred fifty dollars (\$18,750), for taxable years beginning
23 after December 31, 1996, and before January 1, 1998; and
 - 24 d. One hundred percent (100%), but not more than thirty-five
25 thousand dollars (\$35,000), for taxable years beginning after
26 December 31, 1997.
- 27 2. For taxable years beginning after December 31, 2005, exclude up to

1 forty-one thousand one hundred ten dollars (\$41,110) of total
 2 distributions from pension plans, annuity contracts, profit-sharing plans,
 3 retirement plans, or employee savings plans.

4 3. As used in this paragraph:

5 a. "Distributions" includes but is not limited to any lump-sum
 6 distribution from pension or profit-sharing plans qualifying for the
 7 income tax averaging provisions of Section 402 of the Internal
 8 Revenue Code; any distribution from an individual retirement
 9 account as defined in Section 408 of the Internal Revenue Code;
 10 and any disability pension distribution;

11 b. "Annuity contract" has the same meaning as set forth in Section
 12 1035 of the Internal Revenue Code; and

13 c. "Pension plans, profit-sharing plans, retirement plans, or employee
 14 savings plans" means any trust or other entity created or organized
 15 under a written retirement plan and forming part of a stock bonus,
 16 pension, or profit-sharing plan of a public or private employer for
 17 the exclusive benefit of employees or their beneficiaries and
 18 includes plans qualified or unqualified under Section 401 of the
 19 Internal Revenue Code and individual retirement accounts as
 20 defined in Section 408 of the Internal Revenue Code;

21 (j) 1. a. Exclude the portion of the distributive share of a shareholder's net
 22 income from an S corporation subject to the franchise tax imposed
 23 under KRS 136.505 or the capital stock tax imposed under KRS
 24 136.300; and

25 b. Exclude the portion of the distributive share of a shareholder's net
 26 income from an S corporation related to a qualified subchapter S
 27 subsidiary subject to the franchise tax imposed under KRS

1 136.505 or the capital stock tax imposed under KRS 136.300.

2 2. The shareholder's basis of stock held in a S corporation where the S
3 corporation or its qualified subchapter S subsidiary is subject to the
4 franchise tax imposed under KRS 136.505 or the capital stock tax
5 imposed under KRS 136.300 shall be the same as the basis for federal
6 income tax purposes;

7 (k) Exclude for taxable years beginning after December 31, 1998, to the extent
8 not already excluded from gross income, any amounts paid for health
9 insurance, or the value of any voucher or similar instrument used to provide
10 health insurance, which constitutes medical care coverage for the taxpayer, the
11 taxpayer's spouse, and dependents during the taxable year. Any amounts paid
12 by the taxpayer for health insurance that are excluded pursuant to this
13 paragraph shall not be allowed as a deduction in computing the taxpayer's net
14 income under subsection (11) of this section;

15 (l) Exclude income received for services performed as a precinct worker for
16 election training or for working at election booths in state, county, and local
17 primary, regular, or special elections;

18 (m) Exclude any amount paid during the taxable year for insurance for long-term
19 care as defined in KRS 304.14-600;

20 (n) Exclude any capital gains income attributable to property taken by eminent
21 domain;

22 (o) Exclude any amount received by a producer of tobacco or a tobacco quota
23 owner from the multistate settlement with the tobacco industry, known as the
24 Master Settlement Agreement, signed on November 22, 1998;

25 (p) Exclude any amount received from the secondary settlement fund, referred to
26 as "Phase II," established by tobacco companies to compensate tobacco
27 farmers and quota owners for anticipated financial losses caused by the

- 1 national tobacco settlement;
- 2 (q) Exclude any amount received from funds of the Commodity Credit
3 Corporation for the Tobacco Loss Assistance Program as a result of a
4 reduction in the quantity of tobacco quota allotted;
- 5 (r) Exclude any amount received as a result of a tobacco quota buydown program
6 that all quota owners and growers are eligible to participate in;
- 7 (s) Exclude state Phase II payments received by a producer of tobacco or a
8 tobacco quota owner;
- 9 (t) Exclude all income from all sources for active duty and reserve members and
10 officers of the Armed Forces of the United States or National Guard who are
11 killed in the line of duty, for the year during which the death occurred and the
12 year prior to the year during which the death occurred. For the purposes of this
13 paragraph, "all income from all sources" shall include all federal and state
14 death benefits payable to the estate or any beneficiaries; and
- 15 (u) For taxable years beginning on or after January 1, 2010, exclude all military
16 pay received by active duty members of the Armed Forces of the United
17 States, members of reserve components of the Armed Forces of the United
18 States, and members of the National Guard, including compensation for state
19 active duty as described in KRS 38.205;
- 20 (11) "Net income," in the case of taxpayers other than corporations, means adjusted
21 gross income as defined in subsection (10) of this section, minus the standard
22 deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the
23 deduction allowed by KRS 141.0202, minus any amount paid for vouchers or
24 similar instruments that provide health insurance coverage to employees or their
25 families, and minus all the deductions allowed individuals by Chapter 1 of the
26 Internal Revenue Code as modified by KRS 141.0101 except those listed below,
27 except that deductions shall be limited to amounts allocable to income subject to

1 taxation under the provisions of this chapter and that nothing in this chapter shall be
2 construed to permit the same item to be deducted more than once:

3 (a) Any deduction allowed by the Internal Revenue Code for state or foreign taxes
4 measured by gross or net income, including state and local general sales taxes
5 allowed in lieu of state and local income taxes under the provisions of Section
6 164(b)(5) of the Internal Revenue Code;

7 (b) Any deduction allowed by the Internal Revenue Code for amounts allowable
8 under KRS 140.090(1)(h) in calculating the value of the distributive shares of
9 the estate of a decedent, unless there is filed with the income return a
10 statement that such deduction has not been claimed under KRS 140.090(1)(h);

11 (c) The deduction for personal exemptions allowed under Section 151 of the
12 Internal Revenue Code and any other deductions in lieu thereof; and

13 (d) Any deduction for amounts paid to any club, organization, or establishment
14 which has been determined by the courts or an agency established by the
15 General Assembly and charged with enforcing the civil rights laws of the
16 Commonwealth, not to afford full and equal membership and full and equal
17 enjoyment of its goods, services, facilities, privileges, advantages, or
18 accommodations to any person because of race, color, religion, national
19 origin, or sex, except nothing shall be construed to deny a deduction for
20 amounts paid to any religious or denominational club, group, or establishment
21 or any organization operated solely for charitable or educational purposes
22 which restricts membership to persons of the same religion or denomination in
23 order to promote the religious principles for which it is established and
24 maintained;

25 (12) "Gross income," in the case of corporations, means "gross income" as defined in
26 Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and
27 adjusted as follows:

- 1 (a) Exclude income that is exempt from state taxation by the Kentucky
- 2 Constitution and the Constitution and statutory laws of the United States;
- 3 (b) Exclude all dividend income received after December 31, 1969;
- 4 (c) Include interest income derived from obligations of sister states and political
- 5 subdivisions thereof;
- 6 (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal
- 7 covered by Section 631(c) of the Internal Revenue Code if the corporation
- 8 does not claim any deduction for percentage depletion, or for expenditures
- 9 attributable to the making and administering of the contract under which such
- 10 disposition occurs or to the preservation of the economic interests retained
- 11 under such contract;
- 12 (e) Include in the gross income of lessors income tax payments made by lessees
- 13 to lessors, under the provisions of Section 110 of the Internal Revenue Code,
- 14 and exclude such payments from the gross income of lessees;
- 15 (f) Include the amount calculated under KRS 141.205;
- 16 (g) Ignore the provisions of Section 281 of the Internal Revenue Code in
- 17 computing gross income;
- 18 (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal
- 19 Revenue Code);
- 20 (i) Exclude any amount received by a producer of tobacco or a tobacco quota
- 21 owner from the multistate settlement with the tobacco industry, known as the
- 22 Master Settlement Agreement, signed on November 22, 1998;
- 23 (j) Exclude any amount received from the secondary settlement fund, referred to
- 24 as "Phase II," established by tobacco companies to compensate tobacco
- 25 farmers and quota owners for anticipated financial losses caused by the
- 26 national tobacco settlement;
- 27 (k) Exclude any amount received from funds of the Commodity Credit

- 1 Corporation for the Tobacco Loss Assistance Program as a result of a
 2 reduction in the quantity of tobacco quota allotted;
- 3 (l) Exclude any amount received as a result of a tobacco quota buydown program
 4 that all quota owners and growers are eligible to participate in;
- 5 (m) For taxable years beginning after December 31, 2004, and before January 1,
 6 2007, exclude the distributive share income or loss received from a
 7 corporation defined in subsection (24)(b) of this section whose income has
 8 been subject to the tax imposed by KRS 141.040. The exclusion provided in
 9 this paragraph shall also apply to a taxable year that begins prior to January 1,
 10 2005, if the tax imposed by KRS 141.040 is paid on the distributive share
 11 income by a corporation defined in subparagraphs 2. to 8. of subsection
 12 (24)(b) of this section with a return filed for a period of less than twelve (12)
 13 months that begins on or after January 1, 2005, and ends on or before
 14 December 31, 2005. This paragraph shall not be used to delay payment of the
 15 tax imposed by KRS 141.040; and
- 16 (n) Exclude state Phase II payments received by a producer of tobacco or a
 17 tobacco quota owner;
- 18 (13) "Net income," in the case of corporations, means "gross income" as defined in
 19 subsection (12) of this section minus the deduction allowed by KRS 141.0202,
 20 minus any amount paid for vouchers or similar instruments that provide health
 21 insurance coverage to employees or their families, and minus all the deductions
 22 from gross income allowed corporations by Chapter 1 of the Internal Revenue Code
 23 and as modified by KRS 141.0101, except the following:
- 24 (a) Any deduction for a state tax which is computed, in whole or in part, by
 25 reference to gross or net income and which is paid or accrued to any state of
 26 the United States, the District of Columbia, the Commonwealth of Puerto
 27 Rico, any territory or possession of the United States, or to any foreign

- 1 country or political subdivision thereof;
- 2 (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal
- 3 Revenue Code;
- 4 (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored
- 5 in computing net income;
- 6 (d) Any deduction directly or indirectly allocable to income which is either
- 7 exempt from taxation or otherwise not taxed under the provisions of this
- 8 chapter, and nothing in this chapter shall be construed to permit the same item
- 9 to be deducted more than once;
- 10 (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the
- 11 Internal Revenue Code);
- 12 (f) Any deduction for amounts paid to any club, organization, or establishment
- 13 which has been determined by the courts or an agency established by the
- 14 General Assembly and charged with enforcing the civil rights laws of the
- 15 Commonwealth, not to afford full and equal membership and full and equal
- 16 enjoyment of its goods, services, facilities, privileges, advantages, or
- 17 accommodations to any person because of race, color, religion, national
- 18 origin, or sex, except nothing shall be construed to deny a deduction for
- 19 amounts paid to any religious or denominational club, group, or establishment
- 20 or any organization operated solely for charitable or educational purposes
- 21 which restricts membership to persons of the same religion or denomination in
- 22 order to promote the religious principles for which it is established and
- 23 maintained;
- 24 (g) Any deduction prohibited by KRS 141.205; and
- 25 (h) Any dividends-paid deduction of any captive real estate investment trust;
- 26 (14) (a) "Taxable net income," in the case of corporations that are taxable in this state,
- 27 means "net income" as defined in subsection (13) of this section;

- 1 (b) "Taxable net income," in the case of corporations that are taxable in this state
2 and taxable in another state, means "net income" as defined in subsection (13)
3 of this section and as allocated and apportioned under KRS 141.120. A
4 corporation is taxable in another state if, in any state other than Kentucky, the
5 corporation is required to file a return for or pay a net income tax, franchise
6 tax measured by net income, franchise tax for the privilege of doing business,
7 or corporate stock tax;
- 8 (c) "Taxable net income," in the case of homeowners' associations as defined in
9 Section 528(c) of the Internal Revenue Code, means "taxable income" as
10 defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the
11 provisions of subsection (3) of this section, the Internal Revenue Code
12 sections referred to in this paragraph shall be those code sections in effect for
13 the applicable tax year; and
- 14 (d) "Taxable net income," in the case of a corporation that meets the requirements
15 established under Section 856 of the Internal Revenue Code to be a real estate
16 investment trust, means "real estate investment trust taxable income" as
17 defined in Section 857(b)(2) of the Internal Revenue Code, except that a
18 captive real estate investment trust shall not be allowed any deduction for
19 dividends paid;
- 20 (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue
21 Code;
- 22 (16) "Taxable year" means the calendar year or fiscal year ending during such calendar
23 year, upon the basis of which net income is computed, and in the case of a return
24 made for a fractional part of a year under the provisions of this chapter or under
25 regulations prescribed by the commissioner, "taxable year" means the period for
26 which the return is made;
- 27 (17) "Resident" means an individual domiciled within this state or an individual who is

1 not domiciled in this state, but maintains a place of abode in this state and spends in
 2 the aggregate more than one hundred eighty-three (183) days of the taxable year in
 3 this state;

4 (18) "Nonresident" means any individual not a resident of this state;

5 (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal
 6 Revenue Code;

7 (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal
 8 Revenue Code;

9 (21) "Number of withholding exemptions claimed" means the number of withholding
 10 exemptions claimed in a withholding exemption certificate in effect under KRS
 11 141.325, except that if no such certificate is in effect, the number of withholding
 12 exemptions claimed shall be considered to be zero;

13 (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue
 14 Code and includes other income subject to withholding as provided in Section
 15 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;

16 (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the
 17 Internal Revenue Code;

18 (24) (a) For taxable years beginning before January 1, 2005, and after December 31,
 19 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of
 20 the Internal Revenue Code; and

21 (b) For taxable years beginning after December 31, 2004, and before January 1,
 22 2007, "corporations" means:

23 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue
 24 Code;

25 2. S corporations as defined in Section 1361(a) of the Internal Revenue
 26 Code;

27 3. A foreign limited liability company as defined in KRS 275.015;

- 1 4. A limited liability company as defined in KRS 275.015;
- 2 5. A professional limited liability company as defined in KRS 275.015;
- 3 6. A foreign limited partnership as defined in KRS 362.2-102(9);
- 4 7. A limited partnership as defined in KRS 362.2-102(14);
- 5 8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-
- 6 101(7) or (8);
- 7 9. A real estate investment trust as defined in Section 856 of the Internal
- 8 Revenue Code;
- 9 10. A regulated investment company as defined in Section 851 of the
- 10 Internal Revenue Code;
- 11 11. A real estate mortgage investment conduit as defined in Section 860D of
- 12 the Internal Revenue Code;
- 13 12. A financial asset securitization investment trust as defined in Section
- 14 860L of the Internal Revenue Code; and
- 15 13. Other similar entities created with limited liability for their partners,
- 16 members, or shareholders.

17 For purposes of this paragraph, "corporation" shall not include any publicly
 18 traded partnership as defined by Section 7704(b) of the Internal Revenue Code
 19 that is treated as a partnership for federal tax purposes under Section 7704(c)
 20 of the Internal Revenue Code or its publicly traded partnership affiliates. As
 21 used in this paragraph, "publicly traded partnership affiliates" shall include
 22 any limited liability company or limited partnership for which at least eighty
 23 percent (80%) of the limited liability company member interests or limited
 24 partner interests are owned directly or indirectly by the publicly traded
 25 partnership;

26 (25) "Doing business in this state" includes but is not limited to:

- 27 (a) Being organized under the laws of this state;

- 1 (b) Having a commercial domicile in this state;
- 2 (c) Owning or leasing property in this state;
- 3 (d) Having one (1) or more individuals performing services in this state;
- 4 (e) Maintaining an interest in a pass-through entity doing business in this state;
- 5 (f) Deriving income from or attributable to sources within this state, including
- 6 deriving income directly or indirectly from a trust doing business in this state,
- 7 or deriving income directly or indirectly from a single-member limited
- 8 liability company that is doing business in this state and is disregarded as an
- 9 entity separate from its single member for federal income tax purposes; or
- 10 (g) Directing activities at Kentucky customers for the purpose of selling them
- 11 goods or services.

12 Nothing in this subsection shall be interpreted in a manner that goes beyond the
 13 limitations imposed and protections provided by the United States Constitution or
 14 Pub. L. No. 86-272;

15 (26) "Pass-through entity" means any partnership, S corporation, limited liability
 16 company, limited liability partnership, limited partnership, or similar entity
 17 recognized by the laws of this state that is not taxed for federal purposes at the
 18 entity level, but instead passes to each partner, member, shareholder, or owner their
 19 proportionate share of income, deductions, gains, losses, credits, and any other
 20 similar attributes;

21 (27) "S corporation" means "S corporation" as defined in Section 1361(a) of the Internal
 22 Revenue Code;

23 (28) "Limited liability pass-through entity" means any pass-through entity that affords
 24 any of its partners, members, shareholders, or owners, through function of the laws
 25 of this state or laws recognized by this state, protection from general liability for
 26 actions of the entity; and

27 (29) "Captive real estate investment trust" means a real estate investment trust as defined

1 in Section 856 of the Internal Revenue Code that meets the following requirements:

2 (a) 1. The shares or other ownership interests of the real estate investment trust
3 are not regularly traded on an established securities market; or

4 2. The real estate investment trust does not have enough shareholders or
5 owners to be required to register with the Securities and Exchange
6 Commission; and

7 (b) 1. The maximum amount of stock or other ownership interest that is owned
8 or constructively owned by a corporation equals or exceeds:

9 a. Twenty-five percent (25%), if the corporation does not occupy
10 property owned, constructively owned, or controlled by the real
11 estate investment trust; or

12 b. Ten percent (10%), if the corporation occupies property owned,
13 constructively owned, or controlled by the real estate investment
14 trust.

15 The total ownership interest of a corporation shall be determined by
16 aggregating all interests owned or constructively owned by a
17 corporation;

18 2. For the purposes of this paragraph:

19 a. "Corporation" means a corporation taxable under KRS 141.040,
20 and includes an affiliated group as defined in KRS 141.200, that is
21 required to file a consolidated return pursuant to the provisions of
22 KRS 141.200; and

23 b. "Owned or constructively owned" means owning shares or having
24 an ownership interest in the real estate investment trust, or owning
25 an interest in an entity that owns shares or has an ownership
26 interest in the real estate investment trust. Constructive ownership
27 shall be determined by looking across multiple layers of a

1 multilayer pass-through structure; and

2 (c) The real estate investment trust is not owned by another real estate investment
3 trust.

4 ➔Section 43. KRS 154.22-010 is repealed and reenacted to read as follows::

5 The following words and terms as used in KRS 154.22-010 to 154.22-080, unless the
6 context clearly indicates a different meaning, shall have the following meanings:

7 (1) "Activation date" means a date selected by an approved company in the tax
8 incentive agreement at any time within a two (2) year period after the date of final
9 approval of the tax incentive agreement by the authority;

10 (2) "Affiliate" means the following:

11 (a) Members of a family, including only brothers and sisters of the whole or half
12 blood, spouse, ancestors, and lineal descendants of an individual;

13 (b) An individual, and a corporation more than fifty percent (50%) in value of the
14 outstanding stock of which is owned, directly or indirectly, by or for that
15 individual;

16 (c) An individual, and a limited liability company of which more than fifty
17 percent (50%) of the capital interest or profits are owned or controlled,
18 directly or indirectly, by or for that individual;

19 (d) Two (2) corporations which are members of the same controlled group, which
20 includes and is limited to:

21 1. One (1) or more chains of corporations connected through stock
22 ownership with a common parent corporation, if:

23 a. Stock possessing more than fifty percent (50%) of the total
24 combined voting power of all classes of stock entitled to vote or
25 more than fifty percent (50%) of the total value of shares of all
26 classes of stock of each of the corporations, except the common
27 parent corporation, is owned by one (1) or more of the other

1 corporations; and

2 b. The common parent corporation owns stock possessing more than
3 fifty percent (50%) of the total combined voting power of all
4 classes of stock entitled to vote or more than fifty percent (50%) of
5 the total value of shares of all classes of stock of at least one (1) of
6 the other corporations, excluding, in computing the voting power
7 or value, stock owned directly by the other corporations; or

8 2. Two (2) or more corporations, if five (5) or fewer persons who are
9 individuals, estates, or trusts own stock possessing more than fifty
10 percent (50%) of the total combined voting power of all classes of stock
11 entitled to vote or more than fifty percent (50%) of the total value of
12 shares of all classes of stock of each corporation, taking into account the
13 stock ownership of each person only to the extent the stock ownership is
14 identical with respect to each corporation;

15 (e) A grantor and a fiduciary of any trust;

16 (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a
17 grantor of both trusts;

18 (g) A fiduciary of a trust and a beneficiary of that trust;

19 (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a
20 grantor of both trusts;

21 (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value
22 of the outstanding stock of which is owned, directly or indirectly, by or for the
23 trust or by or for a person who is a grantor of the trust;

24 (j) A fiduciary of a trust and a limited liability company more than fifty percent
25 (50%) of the capital interest, or the interest in profits, of which is owned
26 directly or indirectly, by or for the trust or by or for a person who is a grantor
27 of the trust;

- 1 (k) A corporation, a partnership, and a limited partnership, if the same persons
2 own:
- 3 1. More than fifty percent (50%) in value of the outstanding stock of the
4 corporation; and
- 5 2. More than fifty percent (50%) of the capital interest, or the profits
6 interest, in the partnership or limited partnership;
- 7 (l) A corporation and a limited liability company, if the same persons own:
- 8 1. More than fifty percent (50%) in value of the outstanding stock of the
9 corporation; and
- 10 2. More than fifty percent (50%) of the capital interest or the profits in the
11 limited liability company;
- 12 (m) A partnership, limited partnership, and a limited liability company, if the same
13 persons own:
- 14 1. More than fifty percent (50%) of the capital interest or profits in the
15 partnership or limited partnership; and
- 16 2. More than fifty percent (50%) of the capital interest or the profits in the
17 limited liability company;
- 18 (n) An S corporation and another S corporation, if the same persons own more
19 than fifty percent (50%) in value of the outstanding stock of each corporation,
20 S corporation designation being the same as that designation under the
21 Internal Revenue Code of 1986, as amended; or
- 22 (o) An S corporation and a C corporation, if the same persons own more than fifty
23 percent (50%) in value of the outstanding stock of each corporation; S and C
24 corporation designations being the same as those designations under the
25 Internal Revenue Code of 1986, as amended;
- 26 (3) "Agribusiness" means any activity involving the processing of raw agricultural
27 products, including timber, or the providing of value-added functions with regard to

- 1 raw agricultural products;
- 2 (4) "Approved company" means any eligible company seeking to locate an economic
3 development project in a qualified county, which eligible company is approved by
4 the authority pursuant to KRS 154.22-010 to 154.22-080;
- 5 (5) "Approved costs" means:
- 6 (a) Obligations incurred for labor and to contractors, subcontractors, builders, and
7 materialmen in connection with the acquisition, construction, installation,
8 equipping, and rehabilitation of an economic development project;
- 9 (b) The cost of acquiring land or rights in land and any cost incidental thereto,
10 including recording fees;
- 11 (c) The cost of contract bonds and of insurance of all kinds that may be required
12 or necessary during the course of acquisition, construction, installation,
13 equipping, and rehabilitation of an economic development project which is
14 not paid by the contractor or contractors or otherwise provided for;
- 15 (d) All costs of architectural and engineering services, including test borings,
16 surveys, estimates, plans and specifications, preliminary investigations, and
17 supervision of construction, as well as for the performance of all the duties
18 required by or consequent upon the acquisition, construction, installation,
19 equipping, and rehabilitation of an economic development project;
- 20 (e) All costs which shall be required to be paid under the terms of any contract or
21 contracts for the acquisition, construction, installation, equipping, and
22 rehabilitation of an economic development project; and
- 23 (f) All other costs of a nature comparable to those described above;
- 24 (6) "Assessment" means the job development assessment fee authorized by KRS
25 154.22-010 to 154.22-080;
- 26 (7) "Authority" means the Kentucky Economic Development Finance Authority as
27 created in KRS 154.20-010;

1 (8) "Average hourly wage" means the wage and employment data published by the
 2 Office of Employment and Training within the Department of Workforce
 3 Investment in the Education and Workforce Development Cabinet collectively
 4 translated into wages per hour based on a two thousand eighty (2,080) hour work
 5 year for the following sectors:

- 6 (a) Manufacturing;
- 7 (b) Transportation, communications, and public utilities;
- 8 (c) Wholesale and retail trade;
- 9 (d) Finance, insurance, and real estate; and
- 10 (e) Services;

11 (9) "Commonwealth" means the Commonwealth of Kentucky;

12 (10) (a) "Economic development project" means and includes:

- 13 1. The acquisition of ownership in any real estate in a qualified county by
 14 the authority, the approved manufacturing or agribusiness company, or
 15 its affiliate;
- 16 2. The present ownership of real estate in a qualified county by the
 17 approved manufacturing or agribusiness company or its affiliate;
- 18 3. The acquisition or present ownership of improvements or facilities, as
 19 described in paragraph (b) of this subsection, on land which is possessed
 20 or is to be possessed by the approved manufacturing or agribusiness
 21 company pursuant to a ground lease having a term of sixty (60) years or
 22 more;
- 23 4. The new construction of an electric generation facility; and
- 24 5. The legal possession of facilities by an approved company or its affiliate
 25 pursuant to a lease having a term equal to or greater than fifteen (15)
 26 years with a third-party entity, negotiated at arm's length, if the facility
 27 will be used by the approved company to conduct the approved activity

1 for which the inducement has been granted. An economic development
2 project qualifying under this subparagraph shall only be eligible for
3 credits against equipment and costs related to installation of equipment
4 and for purposes of the tax credits provided under the provisions of KRS
5 154.22-010 to 154.22-080 only to the extent of twenty thousand dollars
6 (\$20,000) per job created by and maintained at the economic
7 development project. Notwithstanding KRS 154.22-050(8) and 154.22-
8 060, an economic development project qualifying under this
9 subparagraph shall be eligible only for the aggregate assessments
10 pursuant to KRS 154.22-070 withheld by the approved company each
11 year and shall not be eligible for credit against Kentucky income tax and
12 limited liability entity tax.

- 13 (b) For purposes of paragraph (a)1. and 2. of this subsection, ownership of real
14 estate shall only include fee ownership of real estate and possession of real
15 estate pursuant to a capital lease as determined in accordance with Statement
16 of Financial Accounting Standards No. 13, Accounting for Leases, issued by
17 the Financial Accounting Standards Board, November 1976. With respect to
18 paragraph (a)1., 2., and 3. of this subsection or this paragraph, the
19 construction, installation, equipping, and rehabilitation of improvements,
20 including fixtures and equipment, and facilities necessary or desirable for
21 improvement of the real estate, including surveys; site tests and inspections;
22 subsurface site work; excavation; removal of structures, roadways, cemeteries,
23 and other surface obstructions; filling, grading, and provision of drainage,
24 storm water retention, installation of utilities such as water, sewer, sewage
25 treatment, gas, electricity, communications, and similar facilities; off-site
26 construction of utility extensions to the boundaries of the real estate; and the
27 acquisition, installation, equipping, and rehabilitation of manufacturing

1 facilities on the real estate, for use and occupancy by the approved company or
 2 its affiliates for manufacturing purposes, electric generation, or for
 3 agribusiness purposes. Pursuant to paragraph (a)3. and 5. of this subsection,
 4 an economic development project shall not include lease payments made
 5 pursuant to a ground lease for purposes of the tax credits provided under the
 6 provisions of KRS 154.22-010 to 154.22-080;

7 (11) "Electric generation" means the generation of electricity for resale by means of
 8 combusting at least fifty percent (50%) of the total fuel used to generate electricity
 9 from coal or from gas derived from coal;

10 (12) "Eligible company" means any corporation, limited liability company, partnership,
 11 limited partnership, sole proprietorship, business trust, or any other entity engaged
 12 in manufacturing, electric generation, or in agribusiness;

13 (13) "Employee benefits" means nonmandated costs paid by an eligible company for its
 14 full-time employees for health insurance, life insurance, dental insurance, vision
 15 insurance, defined benefits, 401(k), or similar plans;

16 (14) "Final approval" means the action taken by the authority authorizing the eligible
 17 company to receive inducements under this subchapter;

18 (15) "Full-time employee" means a person employed by an approved company for a
 19 minimum of thirty-five (35) hours per week and subject to the state income tax
 20 imposed by KRS 141.020;

21 (16) "Inducements" means the assessment and the tax credits allowed by KRS 154.22-
 22 060;

23 (17) "Manufacturing" means any activity involving the manufacturing, processing,
 24 assembling, or production of any property, including the processing resulting in a
 25 change in the conditions of the property and any activity related to it, together with
 26 the storage, warehousing, distribution, and related office facilities; however,
 27 "manufacturing" shall not include mining, coal or mineral processing, or extraction

1 of minerals;

2 (18) "Preliminary approval" means the action taken by the authority conditioning final
3 approval by the authority upon satisfaction by the eligible company of the
4 requirements under this subchapter;

5 (19) "Qualified county" means any county certified as such by the authority pursuant to
6 KRS 154.22-010 to 154.22-080;

7 (20) "Revenues" shall not be considered state funds;

8 (21) "State agency" shall have the meaning assigned to the term in KRS 56.440(8);

9 (22) "Tax incentive agreement" means the agreement entered into, pursuant to KRS
10 154.22-050, between the authority and an approved company with respect to an
11 economic development project;

12 (23) "Kentucky gross receipts" means "Kentucky gross receipts" as defined in KRS
13 141.0401; and

14 (24) "Kentucky gross profits" means "Kentucky gross profits" as defined in KRS
15 141.0401.

16 ➔Section 44. KRS 154.23-010 is repealed and reenacted to read as follows:

17 As used in KRS 154.23-005 to 154.23-079, unless the context clearly indicates otherwise:

18 (1) "Affiliate" has the same meaning as in KRS 154.22-010;

19 (2) "Approved company" means an eligible company that locates an economic
20 development project in a qualified zone, as provided for in KRS 154.23-030;

21 (3) "Approved costs" means:

22 (a) For an approved company that establishes a new manufacturing facility or
23 expands an existing manufacturing facility, the following obligations incurred
24 in its economic development project, including rent under leases subject to
25 subsection (8)(b)4. of this section:

26 1. The cost of labor, contractors, subcontractors, builders, and material
27 workers in connection with the acquisition, construction, installation,

- 1 equipping, and rehabilitation of an economic development project;
- 2 2. The cost of acquiring real estate or rights in land and any cost incidental
- 3 thereto, including recording fees;
- 4 3. The cost of contract bonds and insurance of all kinds that may be
- 5 required or necessary during the course of acquisition, construction,
- 6 installation, equipping, and rehabilitation of an economic development
- 7 project that is not paid by the contractor or contractors or otherwise
- 8 provided for;
- 9 4. The cost of architectural and engineering services, including test
- 10 borings, surveys, estimates, plans and specifications, preliminary
- 11 investigations, and supervision of construction, as well as for the
- 12 performance of all duties required by or consequent to the acquisition,
- 13 construction, installation, equipping, and rehabilitation of an economic
- 14 development project;
- 15 5. All costs required to be paid under the terms of any contract for the
- 16 acquisition, construction, installation, equipping, and rehabilitation of an
- 17 economic development project; and
- 18 6. All other costs of a nature comparable to those described above; or
- 19 (b) For an approved company that establishes a new service or technology
- 20 business or expands existing service or technology operations, up to a
- 21 maximum of fifty percent (50%) of the total start-up costs during the term of
- 22 the service and technology agreement, plus up to a maximum of fifty percent
- 23 (50%) of the annual rent for each elapsed year of the service and technology
- 24 agreement;
- 25 (4) "Assessment" means the job development assessment fee authorized by KRS
- 26 154.23-055;
- 27 (5) "Authority" means the Kentucky Economic Development Finance Authority, as

1 created in KRS 154.20-010;

2 (6) "Average hourly wage" means the wage and employment data published by the
3 Office of Employment and Training within the Department of Workforce
4 Investment within the Education and Workforce Development Cabinet collectively
5 translated into wages per hour based on a two thousand eighty (2,080) hour work
6 year for the following sectors:

7 (a) Manufacturing;

8 (b) Transportation, communications, and public utilities;

9 (c) Wholesale and retail trade;

10 (d) Finance, insurance, and real estate; and

11 (e) Services;

12 (7) "Commonwealth" means the Commonwealth of Kentucky;

13 (8) "Economic development project" or "project" means:

14 (a) A new or expanded service or technology activity conducted at a new or
15 expanded site by:

16 1. An approved company; or

17 2. An approved company and its affiliate or affiliates; or

18 (b) Any of the following activities of an approved company engaged in
19 manufacturing:

20 1. The acquisition of or present ownership in any real estate in a qualified
21 zone for the purposes described in KRS 154.23-005 to 154.23-079,
22 which ownership shall include only fee simple ownership of real estate
23 and possession of real estate according to a capital lease as determined
24 in accordance with Statement of Financial Accounting Standards No. 13,
25 Accounting for Leases, issued by the Financial Accounting Standards
26 Board, November 1976;

27 2. The acquisition or present ownership of improvements or facilities on

1 land that is possessed or is to be possessed by the approved company in
2 a ground lease having a term of sixty (60) years or more; provided,
3 however, that this project shall not include lease payments made under a
4 ground lease for purposes of calculating the tax credits offered under
5 KRS 154.23-005 to 154.23-079;

6 3. The construction, installation, equipping, and rehabilitation of
7 improvements, fixtures, equipment, and facilities necessary or desirable
8 for improvement of the real estate owned, used, or occupied by the
9 approved company for manufacturing purposes. Construction activities
10 include surveys; site tests and inspections; subsurface site work;
11 excavation; removal of structures, roadways, cemeteries, and other
12 surface obstructions; filling, grading, and providing drainage and storm
13 water retention; installation of utilities such as water, sewer, sewage
14 treatment, gas, electric, communications, and similar facilities; off-site
15 construction of utility extensions to the boundaries of the real estate; or
16 similar activities as the authority may determine necessary for
17 construction; and

18 4. The leasing of real estate and the buildings and fixtures thereon
19 acquired, constructed, and installed with funds from grants under KRS
20 154.23-060;

21 (9) "Eligible company" means any corporation, limited liability company, partnership,
22 limited partnership, sole proprietorship, business trust, or any other legal entity
23 engaged in manufacturing, or service or technology; however, any company whose
24 primary purpose is retail sales shall not be an eligible company;

25 (10) "Employee benefits" means nonmandated costs paid by an eligible company for its
26 full-time employees for health insurance, life insurance, dental insurance, vision
27 insurance, defined benefits, 401(k), or similar plans;

- 1 (11) "Final approval" means action taken by the authority that authorizes the eligible
2 company to receive inducements in connection with a project under KRS 154.23-
3 005 to 154.23-079;
- 4 (12) "Full-time employee" means a person employed by an approved company for a
5 minimum of thirty-five (35) hours per week and subject to the state income tax
6 imposed by KRS 141.020;
- 7 (13) "Inducements" means the assessment and the income tax credits allowed to an
8 approved company under KRS 154.23-050 and 154.23-055;
- 9 (14) "Local government" means a city, county, or urban-county government;
- 10 (15) "Manufacturing" means to make, assemble, process, produce, or perform any other
11 activity that changes the form or conditions of raw materials and other property, and
12 shall include any ancillary activity to the manufacturing process, such as storage,
13 warehousing, distribution, and related office facilities; however, "manufacturing"
14 shall not include mining, the extraction of minerals or coal, or processing of these
15 resources;
- 16 (16) "Person" means an individual, sole proprietorship, partnership, limited partnership,
17 joint venture, trust, unincorporated organization, association, corporation, limited
18 liability company, institution, entity or government, whether federal, state, county,
19 city, or otherwise, including without limitation any instrumentality, division,
20 political subdivision, district, court, agency, or department thereof;
- 21 (17) "Preliminary approval" means action taken by the authority that conditions final
22 approval of an eligible company and its economic development project upon
23 satisfaction by the eligible company of the applicable requirements under KRS
24 154.23-005 to 154.23-079;
- 25 (18) "Qualified employee" means an individual subject to Kentucky income tax who has
26 resided in the qualified zone where the project exists for at least twelve (12)
27 consecutive months preceding full-time employment by an approved company;

- 1 (19) "Qualified statewide employee" means an individual subject to Kentucky income
2 tax who has resided in any census tract or county in the Commonwealth that meets
3 the criteria in KRS 154.23-015, regardless of whether the tract or county is in a
4 qualified zone, for at least twelve (12) consecutive months preceding full-time
5 employment by an approved company;
- 6 (20) "Qualified zone" means any census tract or county certified as such by the authority
7 in KRS 154.23-015 and 154.23-020;
- 8 (21) "Rent" means:
- 9 (a) The actual annual rent or leasing fee paid by an approved company to a bona
10 fide entity negotiated at arm's length for the use of a building by the approved
11 company to conduct the approved project for which the inducement has been
12 granted; or
- 13 (b) The fair rental value on an annual basis in a building owned by the approved
14 company of the space used by the approved company to conduct the approved
15 project for which the inducement has been granted as determined by the
16 authority using criteria that are customary in the real estate industry for the
17 type of building being used. The fair rental value shall include an analysis of
18 the cost of amortizing the cost of land and building over the period of time
19 customary in the real estate industry for the type of building and for the land
20 being utilized; and
- 21 (c) Rent shall include the customary cost of occupancy, including but not limited
22 to property taxes, heating and air conditioning, electricity, water, sewer, and
23 insurance;
- 24 (22) "Service and technology agreement" means any agreement entered into under KRS
25 154.23-040 on behalf of the authority, an approved company engaged in service or
26 technology, and third-party lessors, if applicable, with respect to an economic
27 development project;

1 (23) (a) "Service or technology" means either:

- 2 1. Any activity involving the performance of work, except work classified
3 by the divisions, including successor divisions, of agriculture, forestry
4 and fishing, mining, utilities, construction, manufacturing, wholesale
5 trade, retail trade, real estate rental and leasing, educational services,
6 accommodation and food services, and public administration in
7 accordance with the "North American Industry Classification System,"
8 as revised by the United States Office of Management and Budget from
9 time to time, or any successor publication; or
10 2. Regional or headquarters operations of an entity engaged in an activity
11 listed in subparagraph 1. of this paragraph.

12 (b) Notwithstanding paragraph (a) of this subsection, "service or technology"
13 shall not include any activity involving the performance of work by an
14 individual who is providing direct service to the public pursuant to a license
15 issued by the state or an association that licenses in lieu of the state;

16 (24) "Start-up costs" means the acquisition cost associated with the project and related to
17 furnishing and equipping a building for ordinary business functions, including
18 computers, nonrecurring costs of fixed telecommunication equipment, furnishings,
19 office equipment, and the relocation of out-of-state equipment, as verified and
20 approved by the authority in accordance with KRS 154.23-040;

21 (25) "Tax incentive agreement" means that agreement entered into pursuant to KRS
22 154.23-035 between the authority and an approved company with respect to an
23 economic development project;

24 (26) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS
25 141.0401; and

26 (27) "Kentucky gross profits" means Kentucky gross profits as defined in KRS
27 141.0401.

1 ➔Section 45. KRS 176.150 is repealed and reenacted to read as follows:

- 2 (1) No applicant shall be given a certificate of eligibility unless his financial statement
3 and the investigation made by the department show that he possesses net current
4 assets or working capital sufficient in the judgment of the department to render it
5 probable that he can satisfactorily execute his contracts and meet obligations therein
6 incurred. All applications for certificates shall expressly authorize the department to
7 obtain all information which it deems pertinent with respect to the financial status,
8 assets, and liabilities of the applicant from any persons having business transactions
9 with the applicant, and shall expressly authorize all those persons to furnish any
10 information requested from them by the department.
- 11 (2) No applicant shall be given a certificate of eligibility until the applicant provides the
12 secretary of the Transportation Cabinet with his sworn statement made under
13 penalty of perjury that he has not knowingly violated any provision of the campaign
14 finance laws of the Commonwealth and that the award of a contract to the applicant
15 will not violate any provision of the campaign finance laws of the Commonwealth.
16 "Knowingly" means, with respect to conduct or to a circumstance described by a
17 statute defining an offense, that a person is aware or should have been aware that
18 his conduct is of that nature or that the circumstance exists.
- 19 (3) Certificates of eligibility shall be issued without reference to the residence of
20 applicants and the administrative regulations regarding the issuance of certificates
21 shall apply equally to residents and nonresidents. A certificate of eligibility shall not
22 be denied to any applicant upon the sole issue of nationality or residence.
- 23 (4) When the applicant is a foreign corporation, limited liability company, or limited
24 partnership, the application shall be accompanied by a certificate from the Secretary
25 of State of the jurisdiction in which it is organized certifying that it is validly
26 existing and in good standing and a certificate from the Kentucky Secretary of State
27 certifying that it is authorized to transact business in the Commonwealth of

1 Kentucky.

2 ➔Section 46. KRS 271B.1-200 is repealed and reenacted to read as follows:

3 (1) A document shall satisfy the requirements of this section, and of any other section
4 that adds to or varies these requirements, to be entitled to filing by the Secretary of
5 State.

6 (2) This chapter must require or permit filing the document in the office of the
7 Secretary of State.

8 (3) The document shall contain the information required by this chapter. It may contain
9 other information as well.

10 (4) The document shall be typewritten, printed, or electronically transmitted. If the
11 document is electronically transmitted, the document shall be in a format that can be
12 retrieved or reproduced in typewritten or printed form.

13 (5) The document shall be in the English language. A corporate name may be in a
14 language other than English if written in English letters or Arabic or Roman
15 numerals, and the certificate of existence required of foreign corporations, if not in
16 English, shall be accompanied by a reasonably authenticated English translation.

17 (6) The document shall be executed:

18 (a) By the chairman of the board of directors of a domestic or foreign corporation,
19 by its president, or by another of its officers;

20 (b) If directors have not been selected or the corporation has not been formed, by
21 an incorporator; or

22 (c) If the corporation is in the hands of a receiver, trustee, or other court-
23 appointed fiduciary, by that fiduciary.

24 (7) The person executing the document shall sign it and state beneath or opposite his
25 signature his name and the capacity in which he signs. The document may but need
26 not contain:

27 (a) A corporate seal of the corporation;

- 1 (b) An attestation, acknowledgment, or verification; or
- 2 (c) A statement regarding the preparer of the document which complies with KRS
- 3 382.335.
- 4 (8) If the Secretary of State has prescribed a mandatory form for the document under
- 5 KRS 271B.1-210, the document shall be in or on the prescribed form.
- 6 (9) The document shall be delivered to the office of the Secretary of State for filing.
- 7 Delivery may be made by electronic transmission, if and to the extent permitted by
- 8 the Secretary of State. If the document is filed in typewritten or printed form and not
- 9 transmitted electronically, the Secretary of State may require one (1) exact or
- 10 conformed copy to be delivered with the document, except as provided in KRS
- 11 271B.5-030 and 271B.15-090.
- 12 (10) One (1) exact or conformed paper, but not electronic, copy of the document shall
- 13 then be filed with and recorded by the county clerk of the county in which the
- 14 registered office of the corporation is situated.
- 15 (11) When the document is delivered to the office of the Secretary of State for filing, the
- 16 correct filing fee, the organization tax, and any penalty required by this chapter or
- 17 other law to be collected by the office of the Secretary of State with the document
- 18 shall be paid or provision for payment shall be made in a manner permitted by the
- 19 Secretary of State. The Secretary of State may accept payment of the correct amount
- 20 due by credit card, charge card, or similar method. However, if the amount due is
- 21 tendered by any method other than cash, the liability shall not be finally discharged
- 22 until the Secretary of State receives final payment or credit of collectible funds.
- 23 (12) Whenever a provision of KRS Chapter 271B permits any of the terms of a plan or a
- 24 filed document to be dependent on facts objectively ascertainable outside the plan
- 25 or filed document, the following provisions apply:
- 26 (a) The manner in which the facts will operate upon the terms of the plan or filed
- 27 document shall be set forth in the plan or filed document;

1 (b) The facts may include but are not limited to:

- 2 1. Any of the following that is available in a nationally recognized news or
- 3 information medium either in print or electronically:
- 4 a. Statistical or market indices;
- 5 b. Market prices of any security or group of securities;
- 6 c. Interest rates;
- 7 d. Currency exchange rates; or
- 8 e. Similar economic or financial data;
- 9 2. A determination or action by any person or body, including the
- 10 corporation or any other party to a plan or filed document; or
- 11 3. The terms of, or actions taken under, an agreement to which the
- 12 corporation is a party, or any other agreement or document;

13 (c) As used in this subsection:

- 14 1. "Filed document" means a document filed with the Secretary of State
- 15 under any provision of KRS Chapter 271B except Subtitle 15 or KRS
- 16 271B.16-220; and
- 17 2. "Plan" means a plan of nonprofit conversion as provided for in KRS
- 18 273.382, conversion into an LLC as provided for in KRS 275.376,
- 19 merger, or of share exchange;

20 (d) The following provisions of a plan or filed document shall not be made

21 dependent on facts outside the plan or filed document:

- 22 1. The name and address of any person required in a filed document;
- 23 2. The registered office of any entity required in a filed document;
- 24 3. The registered agent of any entity required in a filed document;
- 25 4. The number of authorized shares and designation of each class or series
- 26 of shares;
- 27 5. The effective date of a filed document; or

6. Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given; and

(e) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in paragraph (b)1. of this subsection or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of State articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this paragraph are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

➔Section 47. KRS 271B.1-210 is repealed and reenacted to read as follows:

(1) The Secretary of State may prescribe and furnish on request forms for:

- (a) An application for a certificate of existence;
- (b) A foreign corporation's application for a certificate of authority to transact business in this state;
- (c) A foreign corporation's application for a certificate of withdrawal;
- (d) A change of registered office or registered agent;
- (e) The annual report;
- (f) An amendment to the annual report;
- (g) A change of principal address form; and
- (h) An amended application for certificate of authority.

If the Secretary of State so requires, use of these forms shall be mandatory.

(2) The Secretary of State may prescribe and furnish on request forms for other

1 documents required or permitted to be filed by this chapter, but their use shall not
2 be mandatory.

3 ➔Section 48. KRS 271B.1-220 is repealed and reenacted to read as follows:

4 (1) The Secretary of State shall collect the following fees when the documents
5 described in this subsection are delivered to him for filing:

6	(a) Articles of incorporation	\$ 40
7	(b) Application for use of indistinguishable name	\$ 20
8	(c) Application or renewal of application for reserved name	\$ 15
9	(d) Cancellation of application for reserved name	\$ 10
10	(e) Notice of transfer of reserved name	\$ 15
11	(f) Application for registered name	\$ 36
12	(g) Application for renewal of registered name	\$ 36
13	(h) Corporation's statement of change of registered agent	
14	or registered office, or both	\$ 10
15	(i) Corporation's statement of change of principal office address	\$ 10
16	(j) Agent's statement of change of registered office for	
17	each affected corporation	\$ 10
18	not to exceed a total of	\$1,000
19	(k) Amendment of articles of incorporation	\$ 40
20	(l) Restatement of articles of incorporation	\$ 40
21	(m) Amended and restated articles	\$ 80
22	(n) Articles of merger or share exchange	\$ 50
23	(o) Articles of dissolution	\$ 40
24	(p) Articles of revocation of dissolution	\$ 15
25	(q) Reinstatement penalty following administrative dissolution	\$ 100
26	(r) Application for certificate of authority	\$ 90
27	(s) Application for amended certificate of authority	\$ 40

- 1 (t) Application for certificate of withdrawal\$ 40
- 2 (u) Annual report \$ 15
- 3 (v) Amendment to annual report\$ 10
- 4 (w) Articles of correction \$ 20
- 5 (x) Certificate of existence or authorization \$ 10
- 6 (y) Any other document required or permitted to
- 7 be filed by this chapter \$ 15
- 8 (z) Agent's statement of resignation No fee
- 9 (aa) Certificate of administrative dissolution No fee
- 10 (ab) Certificate of reinstatement No fee
- 11 (ac) Certificate of judicial dissolution No fee
- 12 (ad) Certificate of revocation of authority to transact business No fee
- 13 (2) The Secretary of State shall collect a fee of ten dollars (\$10) each time process is
- 14 served on him under this chapter. The party to a proceeding causing service of
- 15 process shall be entitled to recover this fee as costs if he prevails in the proceeding.
- 16 (3) The Secretary of State shall collect the following fees for copying and certifying the
- 17 copy of any filed document relating to a domestic or foreign corporation:
- 18 (a) Five dollars (\$5) per request for the first five (5) pages and fifty cents (\$0.50)
- 19 a page for each page thereafter; and
- 20 (b) Five dollars (\$5) for the certificate.
- 21 (4) The county clerk shall receive a fee pursuant to KRS 64.012 for recording and
- 22 issuing reports, articles, and statements pertaining to corporations.
- 23 ➔Section 49. KRS 271B.1-250 is repealed and reenacted to read as follows:
- 24 (1) If a document delivered to the office of the Secretary of State for filing satisfies the
- 25 requirements of KRS 271B.1-200, the Secretary of State shall file it.
- 26 (2) The Secretary of State files a document by recording it as filed on the date and time
- 27 of receipt. After filing a document, except as provided in KRS 271B.5-030 and

1 271B.15-090, the Secretary of State shall deliver to the domestic or foreign
2 corporation or its representative a copy of the document with an acknowledgment of
3 the date and time of filing.

4 (3) If the Secretary of State refuses to file a document, if filed by paper, the Secretary of
5 State shall return it to the domestic or foreign corporation or its representative
6 within five (5) days after the document was delivered, together with a brief, written
7 explanation of the reason for the refusal. If the document was filed electronically,
8 the Secretary of State's brief explanation of the reason for the refusal may be
9 returned electronically.

10 (4) The Secretary of State's duty to file documents under this section shall be
11 ministerial. The filing or refusal to file a document shall not:

- 12 (a) Affect the validity or invalidity of the document in whole or part;
- 13 (b) Relate to the correctness or incorrectness of information contained in the
14 document; or
- 15 (c) Create a presumption that the document is valid or invalid or that information
16 contained in the document is correct or incorrect.

17 ➔Section 50. KRS 271B.1-290 is repealed and reenacted to read as follows:

18 (1) A person commits an offense by signing a document knowing it is false in any
19 material respect with intent that the document be delivered to the Secretary of State
20 for filing.

21 (2) An offense under this section shall be a misdemeanor punishable by a fine not to
22 exceed one hundred dollars (\$100).

23 ➔Section 51. KRS 271B.1-400 is repealed and reenacted to read as follows:

24 In this chapter:

25 (1) "Articles of incorporation" include amended and restated articles of incorporation
26 and articles of merger;

27 (2) "Authorized shares" means the shares of all classes a domestic or foreign

- 1 corporation is authorized to issue;
- 2 (3) "Conspicuous" means so written that a reasonable person against whom the writing
3 is to operate should have noticed it. For example, printing in italics or boldface or
4 contrasting color, or typing in capitals or underlining, shall be considered
5 conspicuous;
- 6 (4) "Corporation" or "domestic corporation" means a corporation for profit, which is
7 not a foreign corporation, incorporated under or subject to the provisions of this
8 chapter;
- 9 (5) "Deliver" or "delivery" means any method of delivery used in conventional
10 commercial practice, including delivery by hand, mail, commercial delivery, and
11 electronic transmission;
- 12 (6) "Distribution" means a direct or indirect transfer of money or other property (except
13 its own shares) or incurrence of indebtedness by a corporation to or for the benefit
14 of its shareholders in respect of any of its shares. A distribution may be in the form
15 of a declaration or payment of a dividend; a purchase, redemption, or other
16 acquisition of shares; a distribution of indebtedness; or otherwise;
- 17 (7) "Effective date of notice" is defined in KRS 271B.1-410;
- 18 (8) "Electronic transmission" or "electronically transmitted" means any process of
19 communication not directly involving the physical transfer of paper that is suitable
20 for the retention, retrieval, and reproduction of information by the recipient;
- 21 (9) "Employee" includes an officer but not a director. A director may accept duties that
22 make him also an employee;
- 23 (10) "Entity" includes a domestic or foreign corporation; not-for-profit corporation;
24 profit and not-for-profit unincorporated association; business trust, estate,
25 partnership, trust, and two (2) or more persons having a joint or common economic
26 interest; and state, United States, and foreign government;
- 27 (11) "Foreign corporation" means a corporation for profit incorporated under a law other

- 1 than the law of this state;
- 2 (12) "Governmental subdivision" includes authority, county, district, and municipality;
- 3 (13) "Includes" denotes a partial definition;
- 4 (14) "Individual" means a natural person and includes the estate of an incompetent or
5 deceased individual;
- 6 (15) "Means" denotes an exhaustive definition;
- 7 (16) "Name of record with the Secretary of State" means any real, fictitious, reserved,
8 registered, or assumed name of an entity;
- 9 (17) "Notice" is defined in KRS 271B.1-410;
- 10 (18) "Person" includes individual and entity;
- 11 (19) "Principal office" means the office in or out of this state, so designated in writing to
12 the Secretary of State where the principal executive offices of a domestic or foreign
13 corporation are located;
- 14 (20) "Proceeding" includes civil suit and criminal, administrative, and investigatory
15 action;
- 16 (21) "Real name" shall have the meaning set forth in KRS 365.015.
- 17 (22) "Record date" means the date established under Subtitle 6 or 7 of this chapter on
18 which a corporation determines the identity of its shareholders and their
19 shareholdings for purposes of this chapter. The determinations shall be made as of
20 the close of business on the record date, unless another time for doing so is
21 specified when the record date is fixed;
- 22 (23) "Secretary" means the corporate officer to whom the board of directors has
23 delegated responsibility under KRS 271B.8-400(3) for custody of the minutes of the
24 meetings of the board of directors and of the shareholders and for authenticating
25 records of the corporation;
- 26 (24) "Share" means the unit into which the proprietary interests in a corporation are
27 divided;

1 (25) "Shareholder" means the person in whose name shares are registered in the records
 2 of a corporation or the beneficial owner of shares to the extent of the rights granted
 3 by a nominee certificate on file with a corporation;

4 (26) "Sign" or "signature" includes any manual, facsimile, or conformed or electronic
 5 signature;

6 (27) "State," when referring to a part of the United States, includes a state and
 7 Commonwealth and their agencies and governmental subdivisions, and a territory
 8 and insular possession and their agencies and governmental subdivisions of the
 9 United States.

10 (28) "Subscriber" means a person who subscribes for shares in a corporation, whether
 11 before or after incorporation.

12 (29) "United States" includes district, authority, bureau, commission, department, and
 13 any other agency of the United States; and

14 (30) "Voting group" means all shares of one (1) or more classes or series that under the
 15 articles of incorporation or this chapter are entitled to vote and be counted together
 16 collectively on a matter at a meeting of shareholders. All shares entitled by the
 17 articles of incorporation or this chapter to vote generally on the matter are for that
 18 purpose a single voting group.

19 ➔Section 52. KRS 271B.1-410 is repealed and reenacted to read as follows:

20 (1) Notice under this chapter shall be in writing unless oral notice is reasonable under
 21 the circumstances. Notice by electronic transmission is written notice.

22 (2) Notice may be communicated in person; by mail or other method of delivery; or by
 23 telephone, voice mail, or other electronic means. If these forms of personal notice
 24 are impracticable, notice may be communicated by a newspaper of general
 25 circulation in the area where published; or by radio, television, or other form of
 26 public broadcast communication.

27 (3) Written notice by a domestic or foreign corporation to its shareholder, if in a

1 comprehensible form, shall be effective:

2 (a) Upon deposit in the United States mail, if mailed postpaid and correctly
3 addressed to the shareholder's address shown in the corporation's current
4 record of shareholders; or

5 (b) When electronically transmitted to the shareholder in a manner authorized and
6 in accordance with the shareholder's instructions, if any.

7 (4) Written notice to a domestic or foreign corporation authorized to transact business
8 in this state may be addressed to its registered agent at its registered office or to the
9 corporation or its secretary at its principal office shown in its most recent annual
10 report or, in the case of a domestic corporation that has not yet delivered an annual
11 report, in its articles of incorporation or, in the case of a foreign corporation that has
12 not yet delivered an annual report, in its application for a certificate of authority.

13 (5) Except as provided in subsections (3) and (4) of this section, written notice, if in a
14 comprehensible form, shall be effective at the earliest of the following:

15 (a) When received;

16 (b) Five (5) days after its deposit in the United States mail, if mailed postpaid and
17 correctly addressed; or

18 (c) On the date shown on the return receipt, if sent by registered or certified mail,
19 return receipt requested, and the receipt is signed by or on behalf of the
20 addressee.

21 (6) Oral notice shall be effective when communicated, if communicated in a
22 comprehensible manner.

23 (7) If this chapter prescribes notice requirements for particular circumstances, those
24 requirements, shall govern. If articles of incorporation or bylaws prescribe notice
25 requirements not inconsistent with this section or other provisions of this chapter,
26 those requirements shall govern.

27 ➔Section 53. KRS 271B.2-030 is repealed and reenacted to read as follows:

1 (1) Unless a delayed effective date is specified, the corporate existence shall begin
2 when the articles of incorporation are filed by the Secretary of State.

3 (2) The Secretary of State's filing of the articles of incorporation shall be conclusive
4 proof that the incorporators satisfied all conditions precedent to incorporation,
5 except in a proceeding by the state to cancel or revoke the incorporation or
6 involuntarily dissolve the corporation.

7 ➔Section 54. KRS 271B.2-050 is repealed and reenacted to read as follows:

8 (1) After incorporation:

9 (a) If initial directors are named in the articles of incorporation, the initial
10 directors shall hold an organizational meeting, at the call of a majority of the
11 directors, to complete the organization of the corporation by appointing
12 officers, adopting bylaws, and carrying on any other business brought before
13 the meeting;

14 (b) If initial directors are not named in the articles, the incorporator or
15 incorporators shall hold an organizational meeting at the call of a majority of
16 the incorporators:

- 17 1. To elect directors and complete the organization of the corporation; or
- 18 2. To elect a board of directors who shall complete the organization of the
19 corporation.

20 (2) Action required or permitted by this chapter to be taken by incorporators at an
21 organizational meeting may be taken without a meeting if the action taken is
22 evidenced by one (1) or more written consents describing the action taken and
23 signed by each incorporator.

24 (3) An organizational meeting may be held in or out of this state.

25 ➔Section 55. KRS 271B.2-070 is repealed and reenacted to read as follows:

26 (1) Unless the articles of incorporation provide otherwise, the board of directors of a
27 corporation may adopt bylaws to be effective only in an emergency defined in

1 subsection (4) of this section. The emergency bylaws, which are subject to
 2 amendment or repeal by the shareholders, may make all provisions necessary for
 3 managing the corporation during the emergency, including:

- 4 (a) Procedures for calling a meeting of the board of directors;
- 5 (b) Quorum requirements for the meeting; and
- 6 (c) Designation of additional or substitute directors.

7 (2) All provisions of the regular bylaws consistent with the emergency bylaws remain
 8 effective during the emergency. The emergency bylaws are not effective after the
 9 emergency ends.

10 (3) Corporate action taken in good faith in accordance with the emergency bylaws:

- 11 (a) Shall bind the corporation; and
- 12 (b) Shall not be used to impose liability on a corporate director, officer, employee,
 13 or agent.

14 (4) An emergency exists for purposes of this section if a quorum of the corporation's
 15 directors cannot readily be assembled because of some catastrophic event.

16 ➔Section 56. KRS 271B.3-010 is repealed and reenacted to read as follows:

17 (1) Every corporation incorporated under this chapter has the purpose of engaging in
 18 any lawful business unless a more limited purpose is set forth in the articles of
 19 incorporation.

20 (2) A corporation engaging in a business that is subject to regulation under another
 21 statute of this state may incorporate under this chapter only if permitted by, and
 22 subject to all limitations of, the other statute.

23 ➔Section 57. KRS 271B.4-010 is repealed and reenacted to read as follows:

24 (1) A corporate name:

- 25 (a) Shall contain the word "corporation," "incorporated," "company," or "limited"
 26 or the abbreviation "corp.," "inc.," "co.," or "ltd." or words or abbreviations of
 27 like import in another language; and

- 1 (b) Shall not contain language stating or implying that the corporation is
2 organized for a purpose other than that permitted by KRS 271B.3-010 and its
3 articles of incorporation.
- 4 (2) Except as authorized by subsections (3) and (4) of this section, a corporate
5 name must be distinguishable from any name of record with the Secretary of
6 State.
- 7 (3) A corporation may apply to the Secretary of State for authorization to use a name
8 that is not distinguishable upon the Secretary of State's records from one (1) or more
9 of the names described in subsection (2) of this section. The Secretary of State shall
10 authorize use of the name applied for if:
- 11 (a) The other entity consents to the use in writing and submits an undertaking in
12 form satisfactory to the Secretary of State to change its name to a name that is
13 distinguishable upon the records of the Secretary of State from the name of the
14 applying corporation; or
- 15 (b) The applicant delivers to the Secretary of State a certified copy of the final
16 judgment of a court of competent jurisdiction establishing the applicant's right
17 to use the name applied for in this state.
- 18 (4) A corporation may use the name, including the fictitious name, of another entity
19 that is used in this state if the other entity is incorporated or authorized to transact
20 business in this state, and the proposed user corporation:
- 21 (a) Has merged with the other entity;
- 22 (b) Has been formed by reorganization of the other entity; or
- 23 (c) Has acquired all or substantially all of the assets, including the corporate
24 name, of the other entity.
- 25 (5) This chapter does not control the use of assumed names.
- 26 (6) The filing of articles of incorporation under the particular corporate name shall not
27 automatically prevent the use of that name or protect that name from use by other

1 persons.

2 ➔Section 58. KRS 271B.4-020 is repealed and reenacted to read as follows:

- 3 (1) A person may reserve the exclusive use of a corporate name, including a fictitious
 4 name, for a foreign corporation whose corporate name is not available, by
 5 delivering an application to the Secretary of State for filing. The application shall
 6 set forth the name and address of the applicant and the name proposed to be
 7 reserved. If the Secretary of State finds that the corporate name applied for is
 8 available, he shall reserve the name for the applicant's exclusive use for a one
 9 hundred twenty (120) day period. During the thirty (30) days prior to the expiration
 10 of a reservation, the holder thereof may apply to renew the reservation on such form
 11 as shall be provided by the Secretary of State. The renewal shall be effective as of
 12 the expiration of the current reservation and shall renew the reservation for an
 13 additional one hundred twenty (120) days from the expiration.
- 14 (2) The owner of a reserved corporate name may transfer the reservation to another
 15 person by delivering to the Secretary of State a signed notice of the transfer that
 16 states the name and address of the transferee.
- 17 (3) The holder of a reserved corporate name may cancel the reservation by delivery to
 18 the Secretary of State of a notice of cancellation, executed by the applicant for
 19 whom the name was reserved, that states the reserved name and its date of
 20 reservation.

21 ➔Section 59. KRS 271B.4-030 is repealed and reenacted to read as follows:

- 22 (1) A foreign corporation may register its corporate name, or its corporate name with
 23 any addition required by KRS 271B.15-060, if the name is distinguishable upon the
 24 records of the Secretary of State as required under KRS 271B.4-010(2).
- 25 (2) A foreign corporation shall register its corporate name, or its corporate name with
 26 any addition required by KRS 271B.15-060, by delivering to the Secretary of State,
 27 for filing, an application:

1 (a) Setting forth its corporate name, or its corporate name with any addition
 2 required by KRS 271B.15-060, the state or country and date of its
 3 incorporation and a brief description of the nature of the business in which it
 4 is engaged; and

5 (b) Accompanied by a certificate of existence or a document of similar import
 6 from the state or country of incorporation.

7 (3) The name shall be registered for the applicant's exclusive use upon the effective
 8 date of the application.

9 (4) A foreign corporation whose registration is effective may renew it for successive
 10 years by delivering to the Secretary of State for filing a renewal application, which
 11 complies with the requirements of subsection (2) of this section, between October 1
 12 and December 31 of the preceding year. The renewal application when filed shall
 13 renew the registration for the following calendar year.

14 (5) A foreign corporation whose registration is effective may thereafter qualify as a
 15 foreign corporation under the registered name or consent in writing to the use of
 16 that name by a corporation thereafter incorporated under this chapter or by another
 17 foreign corporation thereafter authorized to transact business in this state. The
 18 registration shall terminate when the domestic corporation is incorporated or the
 19 foreign corporation qualifies or consents to the qualification of another foreign
 20 corporation under the registered name.

21 ➔Section 60. KRS 271B.6-010 is repealed and reenacted to read as follows:

22 (1) The articles of incorporation shall prescribe the classes of shares and series of
 23 shares within a class and the number of shares of each class and series that the
 24 corporation is authorized to issue. If more than one (1) class or series of shares is
 25 authorized, the articles of incorporation shall prescribe a distinguishing designation
 26 for each class or series, and, prior to the issuance of shares of a class or series, the
 27 preferences, limitations, and relative rights of that class or series must be described

- 1 in the articles of incorporation. All shares of a class shall have preferences,
 2 limitations, and relative rights identical with those of other shares of the same class
 3 except to the extent otherwise permitted by KRS 271B.6-020.
- 4 (2) The articles of incorporation shall authorize:
- 5 (a) One (1) or more classes or series of shares that together have unlimited voting
 6 rights; and
- 7 (b) One (1) or more classes or series of shares which may be the same class or
 8 classes as those with voting rights, that together are entitled to receive the net
 9 assets of the corporation upon dissolution.
- 10 (3) The articles of incorporation may authorize one (1) or more classes or series of
 11 shares that:
- 12 (a) Have special, conditional, or limited voting rights, or no right to vote, except
 13 to the extent otherwise provided by this chapter;
- 14 (b) Are redeemable or convertible as specified in the articles of incorporation:
- 15 1. At the option of the corporation, the shareholder, or another person or
 16 upon the occurrence of a designated event;
- 17 2. For cash, indebtedness, securities, or other property; or
- 18 3. In a designated amount or in an amount determined in accordance with a
 19 designated formula or by reference to extrinsic data or events;
- 20 (c) Entitle the holders to distributions calculated in any manner, including
 21 dividends that may be cumulative, noncumulative, or partially cumulative; or
- 22 (d) Have preference over any other class or series of shares with respect to
 23 distributions, including dividends and distributions upon the dissolution of the
 24 corporation.
- 25 (4) Terms of shares may be made dependent upon facts objectively ascertainable
 26 outside the articles of incorporation in accordance with KRS 271B.1-200(12).
- 27 (5) The description of the designations, preferences, limitations, and relative rights of

1 share classes in subsection (3) of this section shall not be considered exhaustive.

2 ➔Section 61. KRS 271B.6-270 is repealed and reenacted to read as follows:

- 3 (1) The articles of incorporation, bylaws, an agreement among shareholders, or an
4 agreement between shareholders and the corporation may impose restrictions on the
5 transfer or registration of transfer of shares of the corporation. A restriction shall not
6 affect shares issued before the restriction was adopted unless the holders of the
7 shares are parties to the restriction agreement or voted in favor of the restriction.
- 8 (2) A restriction on the transfer or registration of transfer of shares shall be valid and
9 enforceable against the holder, or a transferee of the holder if the restriction is
10 authorized by this section, and the holder or transferee has actual knowledge of the
11 restriction or its existence is noted conspicuously on the front or back of the
12 certificate or is contained in the information statement required by KRS 271B.6-
13 260(2). Unless so noted or contained, a restriction is not enforceable against a
14 person without knowledge of the restriction.
- 15 (3) A restriction on the transfer or registration of transfer of shares shall be authorized:
- 16 (a) To maintain the corporation's status when it is dependent on the number or
17 identity of its shareholders;
- 18 (b) To preserve exemptions under federal or state securities law;
- 19 (c) In connection with shares issued by the corporation to its officers, directors,
20 employees, or independent contractors, including as equity-based
21 compensation under the Internal Revenue Code; or
- 22 (d) For any other reasonable purpose.
- 23 (4) A restriction on the transfer or registration of transfer of shares may without
24 limitation:
- 25 (a) Obligate the shareholder first to offer the corporation or other persons,
26 separately, consecutively, or simultaneously, an opportunity to acquire the
27 restricted shares;

- 1 (b) Obligate the corporation or other persons, separately, consecutively, or
- 2 simultaneously, to acquire or transfer the restricted shares;
- 3 (c) Obligate a shareholder to transfer the restricted shares to the corporation or
- 4 other persons for an agreed price or a price based on a valuation formula,
- 5 including an obligation to transfer the shares for an amount equal to the
- 6 original consideration paid for the shares;
- 7 (d) Require the corporation, the holders of any class of its shares, or another
- 8 person to approve the transfer of the restricted shares, if the requirement is not
- 9 manifestly unreasonable; or
- 10 (e) Prohibit the transfer of the restricted shares to designated persons or classes of
- 11 persons, if the prohibition is not manifestly unreasonable.

12 (5) For purposes of this section, "shares" includes a security convertible into or carrying
13 a right to subscribe for or acquire shares.

14 ➔Section 62. KRS 271B.7-210 is repealed and reenacted to read as follows:

- 15 (1) Except as provided in subsections (2) and (4) of this section or unless the articles of
- 16 incorporation provide otherwise, each outstanding share, regardless of class, shall
- 17 be entitled to one (1) vote on each matter voted on at a shareholders' meeting. Only
- 18 shares shall be entitled to vote.
- 19 (2) Absent special circumstances, the shares of a corporation shall not be entitled to
- 20 vote if they are owned, directly or indirectly, by an entity, domestic or foreign, and
- 21 the corporation controls, directly or indirectly, the entity's determination to vote,
- 22 and how to vote, the shares.
- 23 (3) Subsection (2) of this section shall not limit the power of a corporation to vote any
- 24 shares, including its own shares, held by it in a fiduciary capacity.
- 25 (4) Redeemable shares shall not be entitled to vote after notice of redemption is mailed
- 26 to the holders and a sum sufficient to redeem the shares has been deposited with a
- 27 bank, trust company, or other financial institution under an irrevocable obligation to

1 pay the holders the redemption price on surrender of the shares.

2 ➔Section 63. KRS 271B.7-270 is repealed and reenacted to read as follows:

3 (1) The articles of incorporation may provide for a greater quorum or voting
4 requirement for shareholders (or voting groups of shareholders) than is provided for
5 by this chapter.

6 (2) An amendment to the articles of incorporation that adds, changes, or deletes a
7 greater quorum or voting requirement shall meet the same quorum requirement and
8 be adopted by the same vote and voting groups required to take action under the
9 quorum and voting requirements then in effect or proposed to be adopted,
10 whichever is greater.

11 ➔Section 64. KRS 271B.7-400 is repealed and reenacted to read as follows:

12 (1) A person shall not commence a proceeding in the right of a domestic or foreign
13 corporation unless he was a shareholder of the corporation when the transaction
14 complained of occurred or unless he became a shareholder through transfer by
15 operation of law from one who was a shareholder at that time. The derivative
16 proceeding shall not be maintained if it appears that the person commencing the
17 proceeding does not fairly and adequately represent the interests of the shareholders
18 in enforcing the right of the corporation.

19 (2) A complaint in a proceeding brought in the right of a corporation shall be verified
20 and allege with particularity the demand made, if any, to obtain action by the board
21 of directors and either that the demand was refused or ignored or why he did not
22 make the demand. Whether or not a demand for action was made, if the corporation
23 commences an investigation of the charges made in the demand or complaint, the
24 court may stay any proceeding until the investigation is completed.

25 (3) A proceeding commenced under this section may not be discontinued or settled
26 without the court's approval. If the court determines that a proposed discontinuance
27 or settlement will substantially affect the interest of the corporation's shareholders

1 or a class of shareholders, the court shall direct that notice be given the shareholders
2 affected.

3 (4) On termination of the proceeding the court may require the plaintiff to pay any
4 defendant's reasonable expenses, including counsel fees, incurred in defending the
5 proceeding if it finds that the proceeding was commenced without reasonable cause.

6 (5) For purposes of this section, "shareholder" includes a beneficial owner whose shares
7 are held in a voting trust or held by a nominee on his behalf.

8 (6) In any derivative proceedings in the right of a foreign corporation, the matters
9 covered by this section shall be governed by the laws of the jurisdiction of
10 incorporation.

11 ➔Section 65. KRS 271B.8-220 is repealed and reenacted to read as follows:

12 (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings
13 of the board of directors may be held without notice of the date, time, place, or
14 purpose of the meeting.

15 (2) Unless the articles of incorporation or bylaws provide for a longer or shorter period,
16 special meetings of the board of directors shall be preceded by at least two (2) days'
17 notice of the date, time, and place of the meeting. The notice need not describe the
18 purpose of the special meeting unless required by the articles of incorporation or
19 bylaws.

20 ➔Section 66. KRS 271B.8-570 is repealed and reenacted to read as follows:

21 A corporation may purchase and maintain insurance on behalf of an individual who is or
22 was a director, officer, employee, or agent of the corporation, or who, while a director,
23 officer, employee or agent of the corporation, is or was serving at the request of the
24 corporation as a director, officer, manager, partner, trustee, employee, or agent of another
25 entity, or of an employee benefit plan or other enterprise, against liability asserted against
26 or incurred in that capacity or arising from the status as a director, officer, manager,
27 employee, or agent, whether or not the corporation would have power to indemnify

1 against the same liability under KRS 271B.8-510 or 271B.8-520.

2 ➔Section 67. KRS 271B.13-020 is repealed and reenacted to read as follows:

3 (1) A shareholder shall be entitled to dissent from, and obtain payment of the fair value
4 of his shares in the event of, any of the following corporate actions:

5 (a) Consummation of a plan of merger to which the corporation is a party:

6 1. If shareholder approval is required for the merger by KRS 271B.11-030
7 or the articles of incorporation and the shareholder is entitled to vote on
8 the merger; or

9 2. If the corporation is a subsidiary that is merged with its parent under
10 KRS 271B.11-040;

11 (b) Consummation of a plan of share exchange to which the corporation is a party
12 as the corporation whose shares will be acquired, if the shareholder is entitled
13 to vote on the plan;

14 (c) Consummation of a sale or exchange of all, or substantially all, of the property
15 of the corporation other than in the usual and regular course of business, if the
16 shareholder is entitled to vote on the sale or exchange, including a sale in
17 dissolution but not including a sale pursuant to court order or a sale for cash
18 pursuant to a plan by which all or substantially all of the net proceeds of the
19 sale will be distributed to the shareholders within one (1) year after the date of
20 sale;

21 (d) Consummation of a plan of conversion of the corporation as provided for in
22 KRS 275.376;

23 (e) An amendment of the articles of incorporation that materially and adversely
24 affects rights in respect of a dissenter's shares because it:

25 1. Alters or abolishes a preferential right of the shares to a distribution or in
26 dissolution;

27 2. Creates, alters, or abolishes a right in respect of redemption, including a

1 provision respecting a sinking fund for the redemption or repurchase of
2 the shares;

3 3. Excludes or limits the right of the shares to vote on any matter other than
4 a limitation by dilution through issuance of shares or other securities
5 with similar voting rights; or

6 4. Reduces the number of shares owned by the shareholder to a fraction of
7 a share, if the fractional share so created is to be acquired for cash under
8 KRS 271B.6-040;

9 (f) Any transaction subject to the requirements of KRS 271B.12-210 or exempted
10 by KRS 271B.12-220(2); or

11 (g) Any corporate action taken pursuant to a shareholder vote to the extent the
12 articles of incorporation, bylaws, or a resolution of the board of directors
13 provides that voting or nonvoting shareholders are entitled to dissent and
14 obtain payment for their shares.

15 (2) A shareholder entitled to dissent and obtain payment for his shares under this
16 chapter shall not challenge the corporate action creating his entitlement unless the
17 action is unlawful or fraudulent with respect to the shareholder or the corporation.

18 ➔Section 68. KRS 271B.14-050 is repealed and reenacted to read as follows:

19 (1) A dissolved corporation shall continue its corporate existence but may not carry on
20 any business except that appropriate to wind up and liquidate its business and
21 affairs, including:

22 (a) Collecting its assets;

23 (b) Disposing of its properties that will not be distributed in kind to its
24 shareholders;

25 (c) Discharging or making provision for discharging its liabilities;

26 (d) Distributing its remaining property among its shareholders according to their
27 interests; and

- 1 (e) Doing every other act necessary to wind up and liquidate its business and
- 2 affairs.
- 3 (2) Dissolution of a corporation shall not:
 - 4 (a) Transfer title to the corporation's property;
 - 5 (b) Prevent transfer of its shares or securities, although the authorization to
 - 6 dissolve may provide for closing the corporation's share transfer records;
 - 7 (c) Subject its directors or officers to standards of conduct different from those
 - 8 prescribed in Subtitle 8 of this chapter;
 - 9 (d) Change quorum or voting requirements for its board of directors or
 - 10 shareholders; change provisions for selection, resignation, or removal of its
 - 11 directors or officers or both; or change provisions for amending its bylaws;
 - 12 (e) Prevent commencement of a proceeding by or against the corporation in its
 - 13 corporate name;
 - 14 (f) Abate or suspend a proceeding pending by or against the corporation on the
 - 15 effective date of dissolution;
 - 16 (g) Terminate the authority of the registered agent of the corporation;
 - 17 (h) Alter the obligations and responsibilities of the corporation as prescribed by
 - 18 applicable federal or state law with regard to the filing or examination of all
 - 19 federal and state tax returns or the payment, assessment, or collection of any
 - 20 federal or state tax due with respect to those returns; or
 - 21 (i) Abate or suspend KRS 271B.6-220.

22 ➔Section 69. KRS 271B.14-210 is repealed and reenacted to read as follows:

- 23 (1) If the Secretary of State determines that one (1) or more grounds exist under KRS
- 24 271B.14-200 for dissolving a corporation, he shall serve the corporation with
- 25 written notice of his determination, by mailing such notice by first-class mail to the
- 26 corporation at its principal place of business address.
- 27 (2) If the corporation does not correct each ground for dissolution or demonstrate to the

1 reasonable satisfaction of the Secretary of State that each ground determined by the
 2 Secretary of State does not exist within sixty (60) days from the date on which the
 3 notice was mailed, the Secretary of State shall administratively dissolve the
 4 corporation by signing a certificate of dissolution that recites the ground or grounds
 5 for dissolution and its effective date. The Secretary of State shall file the original of
 6 the certificate and serve a copy on the corporation by mailing such notice by first-
 7 class mail to the corporation at its principal place of business address.

8 (3) A corporation administratively dissolved continues its corporate existence but may
 9 not carry on any business except that necessary to wind up and liquidate its business
 10 and affairs under KRS 271B.14-050 and notify claimants under KRS 271B.14-060
 11 and 271B.14-070.

12 (4) The administrative dissolution of a corporation shall not terminate the authority of
 13 its registered agent.

14 ➔Section 70. KRS 271B.14-220 is repealed and reenacted to read as follows:

15 (1) A corporation administratively dissolved under KRS 271B.14-210, or revoked
 16 under the provisions of KRS 271A.615, which was repealed by 1988 Ky. Acts, ch.
 17 23, sec. 248, may apply to the Secretary of State for reinstatement at any time after
 18 the effective date of dissolution or revocation. The application shall:

19 (a) Recite the name of the corporation and the effective date of its administrative
 20 dissolution or revocation;

21 (b) State that the ground or grounds for dissolution or revocation either did not
 22 exist or have been eliminated;

23 (c) State that the corporation's name satisfies the requirements of KRS 271B.4-
 24 010;

25 (d) Contain a certificate from the Department of Revenue reciting that all taxes
 26 owed by the corporation have been paid;

27 (e) Contain a certificate from the Division of Unemployment Insurance in the

1 Department for Workforce Investment reciting that all employer contributions,
2 interest, penalties, and service capacity upgrade fund assessments have been
3 paid; and

4 (f) Be accompanied by the reinstatement penalty and the current fee for filing
5 each delinquent annual report provided for in KRS 271B.1-220.

6 (2) If the Secretary of State determines that the application contains the information
7 required by subsection (1) of this section and that the information is correct, he shall
8 cancel the certificate of dissolution or revocation and prepare a certificate of
9 existence that recites his determination and the effective date of reinstatement, file
10 the original of the certificate, and serve a copy on the corporation by mailing the
11 notice by first class mail to the corporation at its registered office.

12 (3) When the reinstatement is effective, it shall relate back to and take effect as of the
13 effective date of the administrative dissolution or revocation and the corporation
14 shall resume carrying on its business as if the administrative dissolution or
15 revocation had never occurred.

16 (4) Notwithstanding any other provision to the contrary, any corporation which was
17 administratively dissolved or revoked and has taken the action necessary to wind up
18 and liquidate its business and affairs under KRS 271B.14-050, and notify claimants
19 under KRS 271B.14-060 and 271B.14-070, shall be prohibited from reinstatement.

20 (5) A corporation administratively dissolved upon the expiration of its period of
21 duration may, in the sixty (60) day period of KRS 271B.14-210(2), amend its
22 articles to extend its period of duration or to delete its period of duration, which
23 amendment will relate back to the day immediately preceding the expiration of the
24 period of duration. A corporation which fails to so amend its articles of
25 incorporation in the sixty (60) day period of KRS 271B.14-210(2) may not
26 thereafter be reinstated, and shall liquidate its business and affairs under KRS
27 271B.14-050 and notify claimants under KRS 271B.14-060 and 271B.14-070.

1 ➔Section 71. KRS 271B.15-010 is repealed and reenacted to read as follows:

- 2 (1) A foreign corporation, except a foreign insurance company, shall not transact
3 business in this state until it obtains a certificate of authority from the Secretary of
4 State..
- 5 (2) The following activities, among others, shall not constitute transacting business
6 within the meaning of subsection (1) of this section:
- 7 (a) Maintaining, defending, or settling any proceeding;
 - 8 (b) Holding meetings of the board of directors or shareholders or carrying on
9 other activities concerning internal corporate affairs;
 - 10 (c) Maintaining bank accounts;
 - 11 (d) Maintaining offices or agencies for the transfer, exchange, and registration of
12 the corporation's own securities or maintaining trustees or depositaries with
13 respect to those securities;
 - 14 (e) Selling through independent contractors;
 - 15 (f) Soliciting or obtaining orders, whether by mail or through employees or
16 agents or otherwise, if the orders require acceptance outside this state before
17 they become contracts;
 - 18 (g) Creating or acquiring indebtedness, mortgages and security interests in real or
19 personal property;
 - 20 (h) Securing or collecting debts or enforcing mortgages and security interests in
21 property securing the debts;
 - 22 (i) Owning, without more, real or personal property;
 - 23 (j) Conducting an isolated transaction that is completed within thirty (30) days
24 and that is not one in the course of repeated transactions of a like nature; and
 - 25 (k) Transacting business in interstate commerce.
- 26 (3) The list of activities in subsection (2) of this section is not exhaustive.
- 27 (4) This section shall not apply in determining the contracts or activities that may

1 subject a foreign corporation to service of process or taxation in this
 2 Commonwealth or to regulation under any other law of this Commonwealth.

3 ➔Section 72. KRS 271B.15-050 is repealed and reenacted to read as follows:

4 (1) A certificate of authority shall authorize the foreign corporation to which it is issued
 5 to transact business in this state subject, however, to the right of the state to revoke
 6 the certificate as provided in this chapter.

7 (2) A foreign corporation with a valid certificate of authority shall have the same but no
 8 greater rights and shall have the same but no greater privileges as, and except as
 9 otherwise provided by this chapter shall be subject to the same duties, restrictions,
 10 penalties, and liabilities now or later imposed on, a domestic corporation of like
 11 character.

12 (3) This chapter shall not authorize this state to regulate the organization or internal
 13 affairs, including the inspection of corporate books, records, and documents, of a
 14 foreign corporation authorized to transact business in this state.

15 ➔Section 73. KRS 271B.15-060 is repealed and reenacted to read as follows:

16 (1) If the real name of a foreign corporation does not satisfy the requirements of KRS
 17 271B.4-010, the foreign corporation to obtain or maintain a certificate of authority
 18 to transact business in this state:

19 (a) May add the word "corporation," "incorporated," "company," or "limited" or
 20 the abbreviation "corp.," "inc.," "co.," or "ltd." to its real name for use in this
 21 state; or

22 (b) May use a fictitious name to transact business in this state if its real name is
 23 unavailable and it delivers to the Secretary of State for filing a copy of the
 24 resolution of its board of directors, certified by its secretary, adopting the
 25 fictitious name.

26 (2) Except as authorized by subsections (3) and (4) of this section, the real or fictitious
 27 name of a foreign corporation shall be distinguishable upon the records of the

1 Secretary of State from any name of record with the Secretary of State.

2 (3) A foreign corporation may apply to the Secretary of State for authorization to use in
3 this state a name that is not distinguishable upon his records from the name applied
4 for. The Secretary of State shall authorize use of the name applied for if:

5 (a) The other entity consents to the use in writing and submits an undertaking in
6 form satisfactory to the Secretary of State to change its name to a name that is
7 distinguishable upon the records of the Secretary of State from the name of the
8 applying corporation; or

9 (b) The applicant delivers to the Secretary of State a certified copy of a final
10 judgment of a court of competent jurisdiction establishing the applicant's right
11 to use the name applied for in this state.

12 (4) A foreign corporation may use in this state the name, including the fictitious name,
13 of another domestic or foreign entity that is used in this state if the other entity is
14 incorporated or authorized to transact business in this state and the foreign entity:

15 (a) Has merged with the other entity;

16 (b) Has been formed by reorganization of the other entity; or

17 (c) Has acquired all or substantially all of the assets, including the corporate
18 name, of the other entity.

19 (5) If a foreign corporation authorized to transact business in this state changes its real
20 name to one that does not satisfy the requirements of KRS 271B.4-010, it shall not
21 transact business in this state under the changed name until it adopts a fictitious
22 name satisfying the requirements of KRS 271B.4-010 and obtains an amended
23 certificate of authority under KRS 271B.15-040.

24 ➔Section 74. KRS 271B.16-220 is repealed and reenacted to read as follows:

25 (1) Each domestic corporation, and each foreign corporation authorized to transact
26 business in this state, shall deliver to the Secretary of State for filing an annual
27 report that sets forth:

- 1 (a) The name of the corporation and the state or country under whose law it is
2 incorporated;
- 3 (b) The address of its registered office and the name of its registered agent at that
4 office in this state;
- 5 (c) The address of its principal office; and
- 6 (d) The names and business addresses of its directors and principal officers;
- 7 (2) Information in the annual report shall be current as of the date the annual report is
8 executed on behalf of the corporation.
- 9 (3) The first annual report shall be delivered to the Secretary of State between January 1
10 and June 30 of the year following the calendar year in which a domestic corporation
11 was incorporated or a foreign corporation was authorized to transact business.
12 Subsequent annual reports shall be delivered to the Secretary of State between
13 January 1 and June 30 of the following calendar years.
- 14 (4) If an annual report does not contain the information required by this section, the
15 Secretary of State shall promptly notify the reporting domestic or foreign
16 corporation in writing and return the report to it for correction. For purposes of KRS
17 271B.1-280(2)(d), an annual report returned for correction shall not be deemed to
18 have been delivered until it is returned and accepted by the Secretary of State.
- 19 (5) A domestic or foreign corporation may amend the information in its last filed
20 annual report by delivery to the Secretary of State of an amendment to the annual
21 report on such form as is provided by the Secretary of State.
- 22 ➔Section 75. KRS 272.010 is repealed and reenacted to read as follows:
- 23 (1) As used in KRS 272.020 to 272.050:
- 24 (a) "Cooperative corporation" means a business concern that distributes the net
25 profit of its business by first paying a fixed dividend upon its stock, if any, and
26 then prorating the remainder of its profits as patronage refunds to its
27 stockholders, members or customers, as provided in bylaws;

- 1 (b) "Patronage refund" means the portion of net profit returned to member patrons
 2 or to all patrons in proportion to their patronage. In the case of an employee
 3 cooperative in which only employees are voting members, "patronage" means
 4 the amount or value of work performed by an employee, as provided in
 5 bylaws;
- 6 (c) "Stockholder" means the holder of voting stock in a cooperative corporation
 7 organized with shares;
- 8 (d) "Member" means the holder of a membership in a cooperative corporation
 9 organized with memberships;
- 10 (e) "Membership" means a lifetime payment made to a cooperative corporation to
 11 secure or provide services, not made in expectation of dividend or profit, and
 12 without any redemption value except at time of dissolution. The articles of
 13 incorporation or bylaws may specify the conditions under which a
 14 membership may be terminated;
- 15 (f) "Nonprofit basis" means that no part of the income or profit of the cooperative
 16 corporation is distributable to its members, directors or officers except in the
 17 form of patronage refunds;
- 18 (g) "Entity" includes a domestic or foreign corporation and corporation; not-for-
 19 profit corporation; profit and not-for-profit unincorporated association;
 20 business or statutory trust; estate; partnership; limited partnership; limited
 21 liability company; trust; two (2) or more persons having a joint or common
 22 economic interest; and state, United States, and foreign government;
- 23 (h) "Name of record with the Secretary of State" means any real, fictitious,
 24 reserved, registered, or assumed name of a business entity; and
- 25 (i) "Real name" shall have the meaning set forth in KRS 365.015.
- 26 (2) As used in KRS 272.360 to 272.510, unless the content for such requires otherwise,
 27 the term:

- 1 (a) "Livestock" shall mean sheep, cattle, hogs, horses, jacks, mules, poultry, or
2 any other animal or bird commonly kept on the farm;
- 3 (b) "Farmer" shall mean any individual, firm, partnership, limited partnership,
4 limited liability company, corporation, or farm management group which
5 derives a portion or all of its income from the production of live stock
6 domiciled on a farm within the Commonwealth;
- 7 (c) "Member" shall include actual members of the association organized under
8 KRS 272.360 to 272.510;
- 9 (d) "Association" means any corporation organized under KRS 272.360 to
10 272.510; and
- 11 (e) "Department" shall mean the Department of Agriculture.

12 (3) Associations organized under KRS 272.360 to 272.510 shall be termed nonprofit
13 inasmuch as they are not organized to make profit for themselves.

14 ➔Section 76. KRS 272.050 is repealed and reenacted to read as follows:

15 No corporation, partnership, limited partnership, limited liability company, or other entity
16 doing business for profit in this state shall use the title "cooperative" as any part of its
17 name unless it has complied with the provisions of KRS 272.020 to 272.050.

18 ➔Section 77. KRS 272.131 is repealed and reenacted to read as follows:

19 (1) The articles of incorporation of each association shall state:

- 20 (a) The name of the association;
- 21 (b) The purposes for which it is formed;
- 22 (c) The place where its principal business will be transacted;
- 23 (d) The period of duration, which may be perpetual. When the articles of
24 incorporation fail to state the period of duration, it shall be considered
25 perpetual. Any association heretofore or hereafter organized for a period less
26 than perpetual, may, by amendment to its articles of incorporation, extend the
27 period of its duration for a specified period or perpetually;

- 1 (e) The names and addresses, not less than five (5), of those who are to serve as
2 directors for the first term or until the election of their successors;
- 3 (f) If organized without capital stock, whether the property rights and interest of
4 each member shall be equal or unequal; and if unequal, the articles shall set
5 forth the general rules applicable to all members by which the property rights
6 and interests, respectively, of each member shall be determined and fixed; and
7 the association shall have the power to admit new members who shall be
8 entitled to share in the property of the association with the old members in
9 accordance with the general rules. These provisions of the articles of
10 incorporation shall not be altered, amended, or repealed except by the
11 affirmative vote of not less than two-thirds (2/3) of the votes entitled to be
12 cast by members present in person, or by proxy, if permitted by the bylaws,
13 and voting thereon at any regular or special meeting; and
- 14 (g) If organized with capital stock, the authorized amount of the stock and the
15 number of shares into which it is divided and the par value thereof. Capital
16 stock may be divided into preferred and common stock. The articles of
17 incorporation must contain a statement of the number of shares of stock to
18 which preference is granted and the number of shares of stock to which no
19 preference is granted and the nature and extent of the preference and the
20 privileges granted to each. No specific amount of the capital stock authorized
21 is required to be subscribed before the association may transact business with
22 other than its members; the board may determine the amount of capital stock
23 to be issued as the business of the association may justify or demand, from
24 time to time, within the amount of the total authorization.
- 25 (2) The articles of incorporation may contain any provision consistent with law with
26 respect to management, regulation, government, financing, indebtedness,
27 membership, the establishment of voting districts and the election of delegates for

1 representative purposes, the issuance, retirement and transfer of its stock, if formed
2 with capital stock, or any provisions relative to the way or manner in which it shall
3 operate with respect to its members, officers, or directors, and any other provisions
4 relating to its affairs; but nothing set forth in this section shall be construed as
5 limiting any of the rights or powers otherwise given to such associations.

6 (3) The articles of incorporation must be subscribed by the incorporators and
7 acknowledged by one (1) of them before an officer authorized by the laws of this
8 state to take and certify acknowledgments of deeds and conveyances; and shall be
9 filed and recorded in accordance with the statute relating to corporations generally;
10 and when so filed, the articles of incorporation, or certified copies thereof, shall be
11 received in all the courts of this state, and other places, as prima facie evidence of
12 the facts contained therein, and of the due incorporation of the association. A copy
13 of the articles of incorporation, indorsed by the Secretary of State with the fact and
14 time of recording in his office, shall be filed with the dean of the College of
15 Agriculture of the University of Kentucky and with the Commissioner of the
16 Department of Agriculture.

17 (4) Except as authorized by subsections (5) and (6) of this section, the name of an
18 association shall be distinguishable from any name of record with the Secretary of
19 State.

20 (5) An association may apply to the Secretary of State for authorization to use a name
21 that is not distinguishable from a name of record with the Secretary of State. The
22 Secretary of State shall authorize use of the name applied for if:

23 (a) The other entity consents to the use in writing and submits an undertaking in
24 form satisfactory to the Secretary of State to change its name to a name that is
25 distinguishable upon the records of the Secretary of State from the name of the
26 applying corporation; or

27 (b) The applicant delivers to the Secretary of State a certified copy of the final

1 judgment of a court of competent jurisdiction establishing the applicant's right
2 to use the name applied for in this state.

3 (6) An association may use the name, including the fictitious name, of another entity
4 that is used in this state, if the other entity is incorporated, organized, or authorized
5 to transact business in this state and the proposed user association:

6 (a) Has merged with the other entity;

7 (b) Has been formed by reorganization of the other entity; or

8 (c) Has acquired all or substantially all of the assets, including the name, of the
9 other entity.

10 (7) This chapter does not control the use of assumed names.

11 (8) The filing of articles of incorporation under the particular name shall not
12 automatically prevent the use of that name or protect that name from use by other
13 persons.

14 ➔Section 78. KRS 272.390 is repealed and reenacted to read as follows:

15 (1) Each association formed under KRS 272.360 to 272.510 must prepare and file
16 articles of incorporation, setting forth:

17 (a) The name of the association;

18 (b) The place where its principal business will be transacted;

19 (c) The term for which it is to exist; the number of directors thereof which must
20 not be less than five (5) and may be any number in excess thereof; the term of
21 office of such directors; and the names and addresses of those who are to
22 serve as incorporating directors for the first term, or until election and
23 qualification of their successors; and

24 (d) The property rights of the members and whether the interest of each member
25 will be equal or unequal; and if unequal, the rule or rules applicable to all
26 members by which the property rights and interests, respectively, of each
27 member shall be determined and fixed; and provision for the admission of

1 new members who shall be entitled to share in the property of the association
 2 with the old members, in accordance with such general rule or rules.

3 (2) Except as authorized by subsections (3) and (4) of this section, the name of an
 4 association must be distinguishable from any name of record with the Secretary of
 5 State.

6 (3) An association may apply to the Secretary of State for authorization to use a name
 7 that is not distinguishable from any name of record with the Secretary of State. The
 8 Secretary of State shall authorize use of the name applied for if:

9 (a) The other entity consents to the use in writing and submits an undertaking in
 10 form satisfactory to the Secretary of State to change its name to a name that is
 11 distinguishable upon the records of the Secretary of State from the name of the
 12 applying association; or

13 (b) The applicant delivers to the Secretary of State a certified copy of the final
 14 judgment of a court of competent jurisdiction establishing the applicant's right
 15 to use the name applied for in this state.

16 (4) An association may use the name, including the fictitious name, of another entity
 17 that is used in this state, if the other entity is incorporated, organized, or authorized
 18 to transact business in this state and the proposed user association:

19 (a) Has merged with the other entity;

20 (b) Has been formed by reorganization of the other entity; or

21 (c) Has acquired all or substantially all of the assets, including the name, of the
 22 other entity.

23 (5) This chapter does not control the use of assumed names.

24 (6) The filing of articles of incorporation under the particular name shall not
 25 automatically prevent the use of that name or protect that name from use by other
 26 persons.

27 ➔Section 79. KRS 273.161 is repealed and reenacted to read as follows:

1 As used in KRS 273.163 to 273.387, unless the context otherwise requires, the term:

- 2 (1) "Corporation" or "domestic corporation" means a nonprofit corporation subject to
3 the provisions of KRS 273.163 to 273.387, except a foreign corporation;
- 4 (2) "Foreign corporation" means a nonprofit corporation organized under laws other
5 than the laws of this state;
- 6 (3) "Nonprofit corporation" means a corporation no part of the income or profit of
7 which is distributable to its members, directors or officers;
- 8 (4) "Articles of incorporation" means the original or restated articles of incorporation or
9 articles of consolidation and all amendments thereto, including articles of merger;
- 10 (5) "Bylaws" means the code or codes of rules adopted for the regulation or
11 management of the affairs of the corporation irrespective of the name or names by
12 which such rules are designated;
- 13 (6) "Member" means one having membership rights in a corporation in accordance with
14 the provisions of its articles of incorporation or bylaws;
- 15 (7) "Board of directors" means the group of persons vested with the management of the
16 affairs of the corporation irrespective of the name by which group is designated;
- 17 (8) "Insolvent" means inability of a corporation to pay its debts as they become due in
18 the usual course of its affairs;
- 19 (9) "Principal office" means the office, in or out of this state, so designated in the
20 annual report where the principal executive offices of a domestic or foreign
21 corporation are located;
- 22 (10) "Secretary" means the corporate officer to whom the board of directors has
23 delegated responsibility for custody of the minutes of the meetings of the board of
24 directors and the members and for authenticating records of the corporation;
- 25 (11) "Individual" includes the estate of an incompetent or deceased individual;
- 26 (12) "Entity" includes a domestic or foreign corporation; not-for-profit corporation;
27 profit and not-for-profit unincorporated association; business or statutory trust,

1 estate, partnership, limited partnership, limited liability company, trust, and two (2)
 2 or more persons having a joint or common economic interest; and state, United
 3 States, and foreign government;

4 (13) "Person" includes individual and entity.

5 (14) "Name of record with the Secretary of State" means any real, fictitious, reserved,
 6 registered, or assumed name of an entity; and

7 (15) "Real name" shall have the meaning set forth in KRS 365.015.

8 ➔Section 80. KRS 273.177 is repealed and reenacted to read as follows:

9 (1) The corporate name shall include the word "corporation" or "incorporated" or the
 10 abbreviation "Inc." or the word "company" or the abbreviation "Co."; but if the
 11 word "company" or the abbreviation "Co." is used, it may not be immediately
 12 preceded by the word "and" or the abbreviation "&." The provisions of this
 13 subsection shall not affect the right of any corporation existing on June 13, 1968, to
 14 continue the use of its name.

15 (2) Except as authorized by subsection (3) of this section, a corporate name shall
 16 be distinguishable from any name of record with the Secretary of State.

17 (3) A corporation may apply to the Secretary of State for authorization to use a name
 18 that is not distinguishable from a name of record with the Secretary of State. The
 19 Secretary of State shall authorize use of the name applied for if:

20 (a) The other entity consents to the use in writing and submits an undertaking in
 21 form satisfactory to the Secretary of State to change its name to a name that is
 22 distinguishable upon the records of the Secretary of State from the name of the
 23 applying corporation; or

24 (b) The applicant delivers to the Secretary of State a certified copy of the final
 25 judgment of a court of competent jurisdiction establishing the applicant's right
 26 to use the name applied for in this state.

27 (4) The corporate name shall not contain any word or phrase which indicates or implies

1 that it is organized for any purpose not permitted under KRS 273.161 to 273.390.

2 (5) This chapter shall not control the use of assumed names.

3 (6) The filing of articles of incorporation under the particular corporate name shall not
4 automatically prevent the use of that name or protect that name from use by other
5 persons.

6 (7) The assumption of a name in violation of this section shall not affect or vitiate the
7 corporate existence; but the courts of this state having equity jurisdiction may, upon
8 the application of the state or of any person interested or affected, enjoin such
9 corporation from doing business under a name assumed in violation of this section,
10 although a certificate of incorporation may have been issued.

11 ➔Section 81. KRS 273.178 is repealed and reenacted to read as follows:

12 (1) A person may reserve the exclusive use of a corporate name, including a fictitious
13 name for a foreign corporation whose corporate name is not available, by delivering
14 an application to the Secretary of State for filing. The application shall set forth the
15 name and address of the applicant and the name proposed to be reserved. If the
16 Secretary of State finds that the corporate name applied for is available, he shall
17 reserve the name for the applicant's exclusive use for a nonrenewable period of one
18 hundred twenty (120) days. Within thirty (30) days of the expiration of a
19 reservation, the holder thereof may apply to renew the reservation on such form as
20 shall be provided by the Secretary of State. The renewal shall be effective as of the
21 expiration of the current reservation and shall renew the reservation for an
22 additional one hundred twenty (120) days from the expiration.

23 (2) The owner of a reserved corporate name may transfer the reservation to another
24 person by delivering to the Secretary of State a signed notice of the transfer that
25 states the name and address of the transferee.

26 (3) The holder of a reserved corporate name may cancel the reservation by delivery to
27 the Secretary of State of a notice of cancellation, executed by the applicant for

1 whom the name was reserved, that states the reserved name and its date of
2 reservation.

3 ➔Section 82. KRS 273.179 is repealed and reenacted to read as follows:

4 (1) A foreign corporation may register its corporate name, or its corporate name with
5 any addition required by KRS 273.364, if the name is distinguishable upon the
6 records of the Secretary of State as required by KRS 273.177(2).

7 (2) A foreign corporation shall register its corporate name, or its corporate name with
8 any addition required by KRS 273.364, by delivering to the Secretary of State for
9 filing an application:

10 (a) Setting forth its corporate name, or its corporate name with any addition
11 required by KRS 273.364, the state or country and date of its incorporation,
12 and a brief description of the nature of the business in which it is engaged; and

13 (b) Accompanied by a certificate of existence, or a document of similar import,
14 from the state or country of incorporation.

15 (3) The name shall be registered for the applicant's exclusive use upon the effective
16 date of the application.

17 (4) A foreign corporation whose registration is effective may renew it for successive
18 years by delivering to the Secretary of State for filing a renewal application, which
19 complies with the requirements of subsection (2) of this section, between October 1
20 and December 31 of the preceding year. The renewal application, when filed, shall
21 renew the registration for the following calendar year.

22 (5) A foreign corporation whose registration is effective may thereafter qualify as a
23 foreign corporation under the registered name or consent in writing to the use of
24 that name by a corporation thereafter incorporated under this chapter or by another
25 foreign corporation thereafter authorized to transact business in this state. The
26 registration shall terminate when the domestic corporation is incorporated or the
27 foreign corporation qualifies or consents to the qualification of another foreign

1 corporation under the registered name.

2 ➔Section 83. KRS 273.364 is repealed and reenacted to read as follows:

3 (1) If the corporate name of a foreign corporation does not satisfy the requirements of
4 KRS 273.177, the foreign corporation, in order to obtain or maintain a certificate of
5 authority to transact business in this state:

6 (a) May add the word "corporation," "incorporated," "company," or "limited" or
7 the abbreviation "corp.," "inc.," "co.," or "ltd." to its corporate name for use in
8 this state; or

9 (b) May use a fictitious name to transact business in this state, if its real name is
10 unavailable and it delivers to the Secretary of State for filing a copy of the
11 resolution of its board of directors, certified by its secretary, adopting the
12 fictitious name.

13 (2) Except as authorized by subsection (3) of this section, the corporate name,
14 including a fictitious name, of a foreign corporation shall be distinguishable
15 from any name of record with the Secretary of State.

16 (3) A foreign corporation may apply for authorization to use in this state a name that is
17 not distinguishable upon the records of the Secretary of State from the name applied
18 for. The Secretary of State shall authorize use of the name applied for if:

19 (a) The other entity consents to the use in writing and submits an undertaking in
20 form satisfactory to the Secretary of State to change its name to a name that is
21 distinguishable upon the records of the Secretary of State from the name of the
22 applying corporation; or

23 (b) The applicant delivers to the Secretary of State a certified copy of a final
24 judgment of a court of competent jurisdiction establishing the applicant's right
25 to use the name applied for in this state.

26 (4) If a foreign corporation authorized to transact business in this state changes its
27 corporate name to one that does not satisfy the requirements of KRS 273.177, it

1 may not transact business in this state under the changed name until it adopts a
 2 name satisfying the requirements of KRS 273.177 and obtains an amended
 3 certificate of authority under KRS 273.3611.

4 ➔Section 84. KRS 273.2521 is repealed and reenacted to read as follows:

5 (1) The Secretary of State may prescribe and furnish on request forms for:

- 6 (a) A certificate of existence;
- 7 (b) A foreign corporation's application for a certificate of authority to transact
 8 business in this state;
- 9 (c) A foreign corporation's application for a certificate of withdrawal;
- 10 (d) A change of registered office or registered agent;
- 11 (e) A change of the principal office address;
- 12 (f) Application for a reservation of name;
- 13 (g) Application to renew a reservation of a name;
- 14 (h) The annual report; and
- 15 (i) An amendment of the annual report.

16 If the Secretary of State so requires, use of these forms shall be mandatory.

17 (2) The Secretary of State may prescribe and furnish on request forms for other
 18 documents required or permitted to be filed by this chapter. Use of these forms shall
 19 not be mandatory.

20 ➔Section 85. KRS 273.3671 is repealed and reenacted to read as follows:

21 (1) Each domestic corporation, and each foreign corporation authorized to transact
 22 business in this state, shall deliver to the Secretary of State for filing an annual
 23 report that sets forth:

- 24 (a) The name of the corporation and the state or country under whose law it is
 25 incorporated;
- 26 (b) The address of its registered office and the name of its registered agent at that
 27 office in this state;

- 1 (c) The address of its principal office; and
- 2 (d) The names and business addresses of its directors and principal officers.
- 3 (2) Information in the annual report shall be current as of the date the annual report is
- 4 executed on behalf of the corporation.
- 5 (3) The first annual report shall be delivered to the Secretary of State between January 1
- 6 and June 30 of the year following the calendar year in which a domestic corporation
- 7 was incorporated or a foreign corporation was authorized to transact business.
- 8 Subsequent annual reports shall be delivered to the Secretary of State between
- 9 January 1 and June 30 of the following calendar years.
- 10 (4) If an annual report does not contain the information required by this section, the
- 11 Secretary of State shall promptly notify the reporting domestic or foreign
- 12 corporation in writing and return the report to it for correction. For purposes of KRS
- 13 273.2527(2)(d), an annual report returned for correction shall not be deemed to have
- 14 been delivered until it is returned to and accepted by the Secretary of State.
- 15 (5) A domestic or foreign corporation may amend the information in its last filed
- 16 annual report by delivery to the Secretary of State of an amendment to the annual
- 17 report on such form as is provided by the Secretary of State.

18 ➔Section 86. KRS 274.005 is repealed and reenacted to read as follows:

19 As used in this chapter, unless the context indicates otherwise:

- 20 (1) "Foreign professional service corporation" means a corporation for profit organized
- 21 for the purpose of rendering professional services under a law other than the law of
- 22 this state;
- 23 (2) "Professional service" means any type of personal service to the public which
- 24 requires as a condition precedent to the rendering of such service the obtaining of a
- 25 license or other legal authorization and which, prior to the passage of this chapter
- 26 and by reason of law or a professional code of ethics, could not be performed by a
- 27 corporation. The personal services which come within the provisions of this chapter

1 are the personal services rendered by but not limited to certified public accountants,
 2 public accountants, chiropractors, osteopaths, physicians and surgeons, doctors of
 3 medicine, doctors of dentistry, podiatrists, chiropodists, architects, veterinarians,
 4 optometrists, and attorneys-at-law;

5 (3) "Professional service corporation" means a corporation organized under this
 6 chapter;

7 (4) "Qualified person" means a natural person, partnership, limited liability company,
 8 or professional service corporation which is eligible under this chapter to own
 9 shares issued by a professional service corporation; and

10 (5) "Regulating board" means the governmental agency which is charged by law with
 11 the licensing and regulation of the practice of the profession which the professional
 12 service corporation is organized to render.

13 ➔Section 87. KRS 274.015 is repealed and reenacted to read as follows:

14 (1) One (1) or more individuals, each of whom is licensed to render the same
 15 professional service or who are licensed to render related professional services such
 16 that applicable licensing laws and regulations would not prohibit the practice of
 17 such multiple professional services through a single business partnership, may
 18 incorporate and form a professional service corporation by filing articles of
 19 incorporation in the office of the Secretary of State. Such articles of incorporation
 20 shall meet the requirements of KRS Chapter 271B, and in addition to the
 21 information required by KRS 271B.2-020, such articles shall contain the following:

22 (a) The designation of the profession or professions to be practiced through the
 23 professional service corporation;

24 (b) The names and residence addresses of all the original shareholders of the
 25 professional service corporation; and

26 (c) A statement by the incorporator or incorporators that each of the
 27 incorporators, shareholders, not less than one-half (1/2) of the directors, and

1 each of the officers other than secretary and treasurer is a qualified person
2 within the meaning of this chapter.

3 (2) A professional service corporation formed under the provisions of this chapter,
4 except as this chapter may otherwise provide, shall have the same powers, authority,
5 duties, and liabilities as a corporation formed under KRS Chapter 271B.

6 ➔Section 88. KRS 274.017 is repealed and reenacted to read as follows:

7 (1) A professional service corporation may issue and a shareholder thereof may transfer
8 or pledge shares, fractional shares, and rights or options to purchase shares only to:

9 (a) Natural persons who are authorized by law in this state or in any other state or
10 territory of the United States or the District of Columbia to render a
11 professional service permitted by the articles of incorporation of the
12 corporation;

13 (b) Partnerships, domestic or foreign, in which all the partners are qualified
14 persons with respect to such professional corporation and in which at least one
15 (1) partner is authorized by the laws of this state to render a professional
16 service permitted by the articles of incorporation of the corporation;

17 (c) A professional limited liability company, domestic or foreign, authorized by
18 law in this state to render a professional service permitted by the articles of
19 organization of the limited liability company and the articles of incorporation
20 of the corporation; and

21 (d) Professional service corporations, domestic or foreign, authorized by law in
22 this state to render a professional service permitted by the articles of
23 incorporation of the corporation.

24 (2) Any issuance or transfer of shares in violation of this section shall be void;
25 however, nothing herein contained shall prohibit the transfer of shares of a
26 professional corporation by operation of law or court decree.

27 ➔Section 89. KRS 274.019 is repealed and reenacted to read as follows:

1 No proxy for shares of a professional service corporation shall be valid unless it shall be
 2 given to a qualified person. A voting trust with respect to shares of a professional service
 3 corporation shall not be valid unless all the trustees and beneficiaries thereof are qualified
 4 persons, except that a voting trust may be validly continued for a period of ten (10)
 5 months after the death of a deceased beneficiary or for a period of five (5) months after a
 6 beneficiary has become a disqualified person.

7 ➔Section 90. KRS 274.065 is repealed and reenacted to read as follows:

8 Nothing in this chapter shall restrict or limit in any manner the authority and duty of any
 9 regulating board of competent jurisdiction to license individual persons rendering
 10 professional services or to regulate the practice of the profession which is within the
 11 jurisdiction of such regulating board, even though such person is an officer, director,
 12 shareholder, or employee of a professional service corporation or engages in the practice
 13 of such profession through a professional service corporation.

14 ➔Section 91. KRS 274.077 is repealed and reenacted to read as follows:

15 The name of a domestic professional service corporation or of a foreign professional
 16 service corporation authorized to transact business in this state:

- 17 (1) Shall contain the words "professional service corporation" or the abbreviation
 18 "P.S.C.";
- 19 (2) Shall not contain any word or phrase which indicates or implies that it is organized
 20 for any purpose other than the purposes contained in its articles of incorporation;
- 21 (3) Shall satisfy the requirements of KRS 271B.4-010(2); and
- 22 (4) Shall otherwise conform to any rule promulgated by a regulating board having
 23 jurisdiction of a professional service described in the articles of incorporation of
 24 such corporation.

25 ➔Section 92. KRS 275.010 is repealed and reenacted to read as follows:

- 26 (1) Except as otherwise set forth in this chapter or unless the articles of organization or
 27 operating agreement provide otherwise, every limited liability company shall have

1 the powers to do all things necessary or convenient to carry out its business and
2 affairs.

3 (2) A limited liability company is a legal entity distinct from its members.

4 (3) Professional limited liability companies shall be governed by the laws, whether
5 statutory or common law, applicable to other limited liability companies. Except for
6 those provisions concerning the personal liability of members, managers,
7 employees, and agents of a limited liability company, nothing in this chapter shall
8 restrict, limit, or expand in any manner the authority and duty of any regulating
9 board to:

10 (a) License individual persons providing professional services; and

11 (b) Regulate the practice of persons providing professional services which are
12 within the jurisdiction of the regulating board, even though the persons are
13 members, managers, employees, or agents of a professional limited liability
14 company, or provide professional services through a professional limited
15 liability company, including the establishment of regulations concerning:

- 16 1. The qualifications of members or managers of a professional limited
17 liability company;
- 18 2. The transfer of limited liability company interests in a professional
19 limited liability company; or
- 20 3. The provision of one (1) or more professional services through a
21 professional limited liability company.

22 ➔Section 93. KRS 275.015 is repealed and reenacted to read as follows:

23 As used in this chapter, unless the context otherwise requires:

24 (1) "Articles of organization" means the articles filed in conformity with the provisions
25 of KRS 275.020 and 275.025, and those articles as amended or restated;

26 (2) "Business entity" means a domestic or foreign limited liability company,
27 corporation, partnership, limited partnership, business or statutory trust, and not-for-

- 1 profit unincorporated association;
- 2 (3) "Corporation" means a profit or nonprofit corporation formed under the laws of any
3 state or a foreign country;
- 4 (4) "Court" means every court having jurisdiction in the case;
- 5 (5) "Deliver" or "delivery" means any method of delivery used in conventional
6 commercial practice, including delivery by hand, mail, commercial delivery, and
7 electronic transmission;
- 8 (6) "Dissent" means a right to object to a proposed action or transaction and, in
9 connection therewith, to demand a redemption of a limited liability company
10 interest;
- 11 (7) "Electronic transmission" or "electronically transmitted" means any process of
12 communication not directly involving the physical transfer of paper that is suitable
13 for the retention, retrieval, and reproduction of information by the recipient;
- 14 (8) "Event of disassociation" means an event that causes a person to cease to be a
15 member as provided in KRS 275.280;
- 16 (9) "Foreign limited liability company" means an organization that is:
- 17 (a) An unincorporated association;
- 18 (b) Organized under laws of a state other than the laws of this Commonwealth, or
19 under the laws of any foreign country; and
- 20 (c) Organized under a statute pursuant to which an association may be formed
21 that affords to each of its members limited liability with respect to the
22 liabilities of the entity;
- 23 (10) "Knowledge" means actual knowledge of a fact;
- 24 (11) "Limited liability company" or "domestic limited liability company" means a
25 limited liability company formed under this chapter having one (1) or more
26 members;
- 27 (12) "Limited liability company interest" or "interest in the limited liability company"

- 1 means the interest that may be issued in accordance with KRS 275.195;
- 2 (13) "Limited partnership" means a limited partnership formed under the laws of the
3 Commonwealth or any other state or a foreign country;
- 4 (14) "Majority-in-interest of the members" means those members entitled to cast a
5 majority of the votes to be cast by the members on any matter under the terms of the
6 operating agreement described in KRS 275.175(3);
- 7 (15) "Manager" or "managers" means, with respect to a limited liability company that
8 has set forth in its articles of organization that it is to be managed by managers, the
9 person or persons designated in accordance with KRS 275.165;
- 10 (16) "Member" or "members" means a person or persons who have been admitted to
11 membership in a limited liability company as provided in KRS 275.275 and who
12 have not ceased to be members as provided in KRS 275.280;
- 13 (17) "Name of record with the Secretary of State" means any real, fictitious, reserved,
14 registered, or assumed name of a business entity;
- 15 (18) "Nonprofit limited liability company" means a limited liability company formed for
16 a nonprofit purpose;
- 17 (19) "Nonprofit purpose" includes any purpose authorized under KRS 273.167;
- 18 (20) "Operating agreement" means any agreement, written or oral, among all of the
19 members, as to the conduct of the business and affairs of a limited liability
20 company. If a limited liability company has only one (1) member, an operating
21 agreement shall be deemed to include:
- 22 (a) A writing executed by the member that relates to the affairs of the limited
23 liability company and the conduct of its business regardless of whether the
24 writing constitutes an agreement; or
- 25 (b) If the limited liability company is managed by a manager, any other agreement
26 between the member and the limited liability company as it relates to the
27 limited liability company and the conduct of its business, regardless of

1 whether the agreement is in writing;

2 (21) "Person" means an individual, a partnership, a domestic or foreign limited liability
3 company, a trust, an estate, an association, a corporation, or any other legal entity;

4 (22) "Principal office" means the office, in or out of the Commonwealth, so designated
5 in writing with the Secretary of State where the principal executive offices of a
6 domestic or foreign limited liability company are located;

7 (23) "Proceeding" means civil suit and criminal, administrative, and investigative action;

8 (24) "Professional limited liability company" means a limited liability company
9 organized under this chapter or the laws of another state or foreign country for
10 purposes that include, but are not limited to, the providing of one (1) or more
11 professional services. Except as otherwise expressly provided in this chapter, all
12 provisions of this chapter governing limited liability companies shall be applicable
13 to professional limited liability companies;

14 (25) "Professional services" mean the personal services rendered by physicians,
15 osteopaths, optometrists, podiatrists, chiropractors, dentists, nurses, pharmacists,
16 psychologists, occupational therapists, veterinarians, engineers, architects,
17 landscape architects, certified public accountants, public accountants, physical
18 therapists, and attorneys;

19 (26) "Real name" shall have the meaning set forth in KRS 365.015;

20 (27) "Regulating board" means the governmental agency which is charged by law with
21 the licensing and regulation of the practice of the profession which the professional
22 limited liability company is organized to provide; and

23 (28) "State" means a state, territory, or possession of the United States, the District of
24 Columbia, or the Commonwealth of Puerto Rico.

25 ➔Section 94. KRS 275.020 is repealed and reenacted to read as follows:

26 (1) One (1) or more persons may serve as the organizer and form a limited liability
27 company by delivering articles of organization to the Secretary of State for filing. It

1 shall not be necessary that the person or persons be members of the limited liability
2 company.

3 (2) Unless a delayed effective date is specified, the existence of the limited liability
4 company shall begin when the articles of organization are filed by the Secretary of
5 State. If a delayed effective date is specified, the existence of the limited liability
6 company shall begin when the articles of organization are effective as specified in
7 KRS 275.060.

8 (3) The Secretary of State's filing of the articles of organization shall be conclusive
9 proof that the organizer or organizers satisfied all conditions precedent to
10 organization, except in a proceeding by the state to cancel or revoke the
11 organization or involuntarily dissolve the limited liability company.

12 ➔Section 95. KRS 275.025 is repealed and reenacted to read as follows:

13 (1) The articles of organization shall set forth:

14 (a) A name for the limited liability company that satisfies the requirements of
15 KRS 275.100;

16 (b) The street address of the limited liability company's initial registered office,
17 and the name of its initial registered agent at that office;

18 (c) The mailing address of the initial principal office of the limited liability
19 company; and

20 (d) A statement that the limited liability company is to be managed by a manager
21 or managers or that the limited liability company is to be managed by its
22 members.

23 (2) The term of a limited liability company shall be perpetual unless a period of
24 duration other than perpetual is set forth in the articles of organization.

25 (3) The articles of organization of a professional limited liability company shall
26 designate the professional services to be practiced through the professional limited
27 liability company.

- 1 (4) The articles of organization may set forth any other matter that under this chapter is
2 permitted to be set forth in an operating agreement not inconsistent with law.
- 3 (5) A written statement of the initial registered agent consenting to serve in that
4 capacity shall accompany the articles of organization.
- 5 (6) A member of a limited liability company shall not have a vested property right
6 resulting from any provision of the articles of organization.
- 7 (7) If the limited liability company is a nonprofit limited liability company, then the
8 articles of organization shall state that fact and its nonprofit purpose. This provision
9 of the articles of organization shall not be removed from the articles of organization
10 without written notice to the Attorney General of Kentucky given not less than ten
11 (10) business days prior to the filing of the amendment.
- 12 (8) The fact that the articles of organization are on file with the Secretary of State is
13 notice:
- 14 (a) That the limited liability company formed by the filing of the articles of
15 organization is a limited liability company formed under the laws of the
16 Commonwealth of Kentucky; and
- 17 (b) Of all other facts set forth in the articles of organization which are required to
18 be set forth by subsections (1), (3), and (7) of this section.
- 19 ➔Section 96. KRS 275.030 is repealed and reenacted to read as follows:
- 20 (1) A limited liability company shall amend its articles of organization to add or change
21 a provision that is required by this chapter to be included in the articles of
22 organization. A limited liability company may amend its articles of organization to
23 add, change, or delete a provision that is permitted to be or that is not required to be
24 in the articles of organization. The articles of organization shall be amended if:
- 25 (a) There is a change in the name of the limited liability company;
- 26 (b) There is a change in the latest date upon which the limited liability company is
27 to dissolve;

- 1 (c) There is a change in whether the management of the limited liability company
- 2 is vested in managers or members; or
- 3 (d) There is a change in any other matter required to be set forth in the articles of
- 4 organization under KRS 275.025.
- 5 (2) Except as provided in subsection (3) of this section, or unless the articles of
- 6 organization or the operating agreement provide otherwise, an amendment to the
- 7 articles of organization of a limited liability company shall be approved by the
- 8 members in accordance with KRS 275.175.
- 9 (3) Unless the articles of organization or the written operating agreement provide
- 10 otherwise, a manager or, if there is no manager, any member may amend the articles
- 11 of organization of the limited liability company without action by the members to
- 12 delete:
- 13 (a) The name and address of the initial registered agent or initial registered office
- 14 if a statement of change pursuant to KRS 275.120 is on file with the Secretary
- 15 of State; or
- 16 (b) The mailing address of the initial principal office, if a statement of change
- 17 pursuant to KRS 275.040 is on file with the Secretary of State.
- 18 (4) To amend its articles of organization, a limited liability company shall file with the
- 19 Secretary of State articles of amendment setting forth:
- 20 (a) The name of the limited liability company;
- 21 (b) The text of each amendment adopted;
- 22 (c) The date of each amendment's adoption; and
- 23 (d) A statement that the amendment was duly adopted by the managers or the
- 24 members in accordance with the articles of organization, the operating
- 25 agreement of the limited liability company, or this chapter.
- 26 (5) The articles of organization may be amended in any respect as may be desired, if the
- 27 articles of organization as amended contain only provisions that may be lawfully

1 contained in articles of organization at the time of making the amendment.

2 (6) Unless the articles of organization provide otherwise, no member of a limited
3 liability company shall have the right to dissent from an amendment to the articles
4 of organization.

5 ➔Section 97. KRS 275.045 is repealed and reenacted to read as follows:

6 (1) A document shall satisfy the requirements of this section, and of any other section
7 of this chapter that adds to or varies these requirements, to be entitled to filing by
8 the Secretary of State.

9 (2) This chapter shall require or permit filing the document in the Office of the
10 Secretary of State.

11 (3) The document shall contain the information required by this chapter. It may also
12 contain other information.

13 (4) The document shall be typewritten or printed or, if electronically transmitted, it
14 shall be in a format that can be retrieved or reproduced in typewritten or printed
15 form. The typewritten or printed portion shall be in black. Manually-signed
16 photocopies, or other reproduced copies, of typewritten or printed documents may
17 be filed.

18 (5) The document shall be in the English language. A limited liability company name
19 may be in a language other than English if written in English letters or Arabic or
20 Roman numerals. Any document that may be filed by a foreign limited liability
21 company which is duly authenticated by the official having custody of the
22 applicable records in the state, country, or other jurisdiction under whose law the
23 limited liability company is formed may be in a language other than English if
24 accompanied by a reasonably authenticated English translation.

25 (6) Unless otherwise provided in any other section of this chapter, any document
26 required by this chapter to be filed with the Secretary of State shall be executed:

27 (a) If management of the limited liability company is vested in one (1) or more

- 1 managers, by any one (1) of the managers;
- 2 (b) If management of the limited liability company is reserved to the members, by
3 any one (1) of the members;
- 4 (c) If the limited liability company has not been formed, by the persons forming a
5 limited liability company; or
- 6 (d) If the limited liability company is in the hands of a receiver, trustee, or other
7 court-appointed fiduciary, by that fiduciary.
- 8 (7) The persons executing the document shall sign it and state beneath or opposite their
9 signatures the names of the persons and the capacity in which each signs.
- 10 (8) The person executing the document may do so as an attorney-in-fact. Powers of
11 attorney relating to the execution of the document shall not be required to be
12 provided to or filed with the Secretary of State.
- 13 (9) If the Secretary of State has prescribed a mandatory form for a document, then the
14 document shall be in or on the prescribed form.
- 15 (10) The document shall be delivered to the Secretary of State for filing. Delivery may
16 be made by electronic transmission, if and to the extent permitted by the Secretary
17 of State. If it is filed in typewritten or printed form and not transmitted
18 electronically, then the Secretary of State may require that it be accompanied by two
19 (2) exact or conformed copies.
- 20 (11) One (1) of the exact or conformed copies or, if transmitted electronically, a
21 reproduction in paper form, shall be filed with and recorded by the county clerk of
22 the county in which the registered office of the limited liability company is situated.
- 23 (12) When the document is delivered to the office of the Secretary of State for filing, the
24 correct filing fee and any penalty required by this chapter or other law to be
25 collected by the office of the Secretary of State shall be paid or provision for
26 payment made in a manner permitted by the Secretary of State. The Secretary of
27 State may accept payment of the correct amount due by credit card, debit card,

charge card, or similar method. However, if the amount due is tendered by any method other than cash, then the liability is not finally discharged until the Secretary of State receives final payment or credit of collectible funds.

➔Section 98. KRS 275.050 is repealed and reenacted to read as follows:

(1) The Secretary of State shall prescribe and furnish on request forms for:

- (a) A certificate of existence or authorization;
- (b) An application for a certificate of authority;
- (c) An application for a certificate of withdrawal;
- (d) A statement of change of registered office or registered agent;
- (e) A statement of change of principal office address;
- (f) The annual report;
- (g) An amendment of the annual report;
- (h) An application for a reservation of name;
- (i) An application to renew a reservation of name; and
- (j) An amended application for certificate of authority.

(2) The Secretary of State shall have the discretion to make mandatory the use of the forms referred to in subsection (1) of this section.

(3) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed pursuant to this chapter, but their use shall not be mandatory.

➔Section 99. KRS 275.055 is repealed and reenacted to read as follows:

(1) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

- (a) Articles of organization\$ 40.00
- (b) Application for certificate of authority as a
foreign limited liability company\$ 90.00
- (c) Amendment of article of organization\$ 40.00

1	(d)	Restatement of articles of organization	\$ 40.00
2	(e)	Amendment and restatement of articles of organization	\$ 80.00
3	(f)	Articles of dissolution with respect to a domestic	
4		limited liability company	\$ 40.00
5	(g)	Limited liability company's statement of change of	
6		registered agent or change of the address of the registered	
7		office, or both	\$ 10.00
8	(h)	Registered agent's statement of change of registered office for	
9		each affected limited liability company	\$ 10.00
10		not to exceed a total of	\$ 1,000.00
11	(i)	Limited liability company's statement of change of the	
12		mailing address of the principal office	\$ 10.00
13	(j)	Application to reserve a name for use by a domestic	
14		or foreign limited liability company	\$ 15.00
15	(k)	Renewal of application to reserve a name for use by	
16		a domestic or foreign limited liability company	\$ 15.00
17	(l)	Notice of the transfer of a name reserved for use by a	
18		domestic or a foreign limited liability company	\$ 15.00
19	(m)	Application for use of indistinguishable name	\$ 20.00
20	(n)	Application for registered name	\$ 36.00
21	(o)	Application for renewal of registered name	\$ 36.00
22	(p)	Articles of merger	\$ 50.00
23	(q)	Application for amended certificate of authority	\$ 40.00
24	(r)	Application for certificate of withdrawal	\$ 40.00
25	(s)	Articles of correction	\$ 20.00
26	(t)	Certificate of existence or authorization	\$ 10.00
27	(u)	Reinstatement penalty following administrative dissolution	\$ 100.00

- 1 (v) Annual report\$ 15.00
- 2 (w) Amendment to annual report\$ 10.00
- 3 (x) Articles of share exchange\$ 50.00
- 4 (y) Any other document required or permitted to be
- 5 filed by this chapter\$ 15.00

6 (2) The Secretary of State shall collect a fee of ten dollars (\$10) each time process is
 7 served on the Secretary of State under this chapter. The party to a proceeding
 8 causing service of process shall be entitled to recover this fee as costs if the party
 9 prevails in the proceeding.

10 (3) The Secretary of State shall collect the following fees for copying and certifying the
 11 copy of any filed documents relating to a domestic or foreign limited liability
 12 company:

13 (a) Five dollars (\$5) per request for the first five (5) pages and fifty cents (\$0.50)
 14 a page for each page thereafter; and

15 (b) Five dollars (\$5) for the certificate.

16 (4) The county clerk shall receive a fee pursuant to KRS 64.012 for recording and
 17 issuing reports, articles, and statements pertaining to limited liability companies.

18 ➔Section 100. KRS 275.060 is repealed and reenacted to read as follows:

19 (1) Except as provided in subsection (2) of this section and KRS 275.065(3), a
 20 document shall be effective at the time of filing on the date it is filed, as evidenced
 21 by any means the Secretary of State may allow for the purpose of recording the date
 22 and time of filing, or at the time specified in the document as its effective time on
 23 the date it is filed.

24 (2) A document may specify a delayed effective time and date. If the document does so
 25 specify and is filed pursuant to subsection (1) of this section, then the document
 26 shall become effective at the time and date specified. If a delayed effective date but
 27 no time is specified, then the document shall be effective at the close of business on

1 that date. A delayed effective date for a document shall not be later than the
2 ninetieth day after the date it is filed.

3 (3) A document filed in accordance with this section shall be effective regardless of a
4 failure to file the document with the county clerk pursuant to KRS 275.045(11).

5 ➔Section 101. KRS 275.065 is repealed and reenacted to read as follows:

6 (1) A domestic or foreign limited liability company may correct a document filed by the
7 Secretary of State in accordance with subsection (2) of this section if:

8 (a) The document contains an inaccuracy;

9 (b) The document was defectively executed, attested, sealed, verified, or
10 acknowledged; or

11 (c) The electronic transmission of the document was defective.

12 (2) A document shall be corrected:

13 (a) By preparing articles of correction that:

14 1. Describe the document, including its filing date, or have attached a copy
15 of the document to the articles of correction;

16 2. Specify the inaccuracy or defect to be corrected; and

17 3. Correct the inaccuracy or defect; and

18 (b) By delivering the articles of correction to the Secretary of State for filing.

19 (3) Articles of correction shall be effective on the effective date of the document they
20 correct except as to persons relying on the uncorrected document adversely affected
21 by the correction. As to those persons, articles of correction shall be effective when
22 filed.

23 ➔Section 102. KRS 275.070 is repealed and reenacted to read as follows:

24 (1) If a document delivered to the Secretary of State for filing satisfies the requirements
25 of KRS 275.045, then the Secretary of State shall file it.

26 (2) The Secretary of State shall file a document by recording it as filed on the date and
27 time of receipt. After filing a document, except as provided in KRS 275.125 and

1 275.420, the Secretary of State shall deliver to the domestic or foreign limited
 2 liability company or its representative a copy of the document with an
 3 acknowledgment of the date and time of filing.

4 (3) If the Secretary of State refuses to file a document, then the Secretary of State shall
 5 return it to the domestic or foreign limited liability company or its representative
 6 within five (5) days after the document was delivered, together with a brief, written
 7 explanation of the reason for the refusal.

8 (4) The Secretary of State's duty to file documents under this section shall be
 9 ministerial. The filing or refusal to file a document by the Secretary of State shall
 10 not:

- 11 (a) Affect the validity or invalidity of the document in whole or part;
- 12 (b) Relate to the correctness or incorrectness of information contained in the
- 13 document; or
- 14 (c) Create a presumption that the document is valid or invalid or that information
- 15 contained in the document is correct or incorrect.

16 ➔Section 103. KRS 275.080 is repealed and reenacted to read as follows:

17 A certificate from the Secretary of State delivered with a copy of the document filed by
 18 the Secretary of State shall be conclusive evidence that the original document is on file
 19 with the Secretary of State.

20 ➔Section 104. KRS 275.095 is repealed and reenacted to read as follows:

21 All persons purporting to act as or on behalf of a limited liability company, knowing there
 22 has been no organization under this chapter, or who assume to act for a limited liability
 23 company without authority to do so, shall be jointly and severally liable for all liabilities
 24 created while so acting.

25 ➔Section 105. KRS 275.100 is repealed and reenacted to read as follows:

26 (1) The name of each limited liability company as set forth in its articles of
 27 organization shall contain the words "limited liability company" or "limited

1 company" or the abbreviations "LLC" or "LC." The name of each limited liability
 2 company which is a professional limited liability company shall contain the words
 3 "professional limited liability company" or "professional limited company" or the
 4 abbreviations "PLLC" or "PLC." The word "Limited" may be abbreviated as "Ltd.,"
 5 and the word "Company" may be abbreviated as "Co."

6 (2) Except as authorized by subsections (3) and (4) of this section, the name of a
 7 limited liability company shall be distinguishable from any name on record with the
 8 Secretary of State.

9 (3) A limited liability company may apply to the Secretary of State for authorization to
 10 use a name that is not distinguishable upon the Secretary of State's records from one
 11 (1) or more of the names described in subsection (2) of this section. The Secretary
 12 of State shall authorize use of the name applied for if:

13 (a) The other business entity consents to the use in writing and submits an
 14 undertaking in form satisfactory to the Secretary of State to change its name to
 15 a name that is distinguishable upon the records of the Secretary of State from
 16 the name of the applying limited liability company; or

17 (b) The applicant delivers to the Secretary of State a certified copy of the final
 18 judgment of a court of competent jurisdiction establishing the applicant's right
 19 to use the name applied for in this Commonwealth.

20 (4) A limited liability company may use the name, including the fictitious name, with
 21 any modification required by this section or KRS 275.410 of another business entity
 22 that is used in this Commonwealth if the other business entity is organized or
 23 authorized to transact business in this Commonwealth and the limited liability
 24 company:

25 (a) Has merged with the other business entity;

26 (b) Has been formed by reorganization of the other business entity; or

27 (c) Has acquired all or substantially all of the assets, including the business name,

1 of the other business entity.

2 (5) This chapter shall not control the use of assumed names.

3 (6) The filing of articles of organization under the particular name of the limited
4 liability company shall not automatically prevent the use of that name or protect that
5 name from use by other persons.

6 ➔Section 106. KRS 275.105 is repealed and reenacted to read as follows:

7 (1) A person may apply to the Secretary of State to reserve the exclusive use of a
8 limited liability company name, including the fictitious name, for a foreign limited
9 liability company whose limited liability company name is not available for use in
10 this Commonwealth. If the Secretary of State finds that the limited liability
11 company name applied for is available, the Secretary of State shall reserve the name
12 for the applicant's exclusive use for one (1) nonrenewable period of one hundred
13 twenty (120) days. During the thirty (30) days prior to the expiration of a
14 reservation, the holder of the registration may apply to renew the reservation on
15 such form as shall be provided by the Secretary of State. The renewal shall be
16 effective as of the expiration of the current reservation and shall renew the
17 reservation for an additional one hundred twenty (120) days from the expiration.

18 (2) The holder of a reserved limited liability company name may transfer the
19 reservation to another person by delivering to the Secretary of State a notice of the
20 transfer, executed by the applicant for whom the name was reserved, and specifying
21 the name and address of the transferee.

22 (3) The holder of a reserved limited liability company name may cancel the reservation
23 by delivery to the Secretary of State of a notice of cancellation, executed by the
24 applicant for whom the name was reserved, that states the reserved name and its
25 date of reservation.

26 ➔Section 107. KRS 275.135 is repealed and reenacted to read as follows:

27 (1) Except as provided in subsection (2) of this section, every member shall be an agent

1 of the limited liability company for the purpose of its business or affairs, and the act
2 of any member, including but not limited to the execution in the name of the limited
3 liability company of any instrument, for apparently carrying on in the usual way the
4 business or affairs of the limited liability company of which he is a member, shall
5 bind the limited liability company, unless the member so acting has, in fact, no
6 authority to act for the limited liability company in the particular matter, and the
7 person with whom the member is dealing has knowledge or has received
8 notification of the fact that the member has no such authority.

9 (2) If the articles of organization provide that management of the limited liability
10 company is vested in a manager or managers:

11 (a) No member, solely by reason of being a member, shall be an agent of the
12 limited liability company; and

13 (b) Every manager shall be an agent of the limited liability company for the
14 purpose of its business or affairs, and the act of any manager, including, but
15 not limited to, the execution in the name of the limited liability company of
16 any instrument, for apparently carrying on in the usual way the business or
17 affairs of the limited liability company of which he is the manager shall bind
18 the limited liability company, unless the manager so acting has, in fact, no
19 authority to act for the limited liability company in the particular matter, and
20 the person with whom the manager is dealing has knowledge or has received
21 notification of the fact that the manager has no such authority.

22 (3) An act of a manager or a member which is apparently not for the carrying on in the
23 usual way of the business or affairs of the limited liability company shall not bind
24 the limited liability company unless, at the time of the transaction or at any other
25 time, the act is authorized in accordance with the operating agreement.

26 (4) An act of a manager or member in contravention of a restriction on authority shall
27 not bind the limited liability company to persons having knowledge of the

1 restriction.

2 ➔Section 108. KRS 275.165 is repealed and reenacted to read as follows:

- 3 (1) Unless the articles of organization vest management of the limited liability company
4 in a manager or managers, management of the business and affairs of the limited
5 liability company shall vest in the members. Subject to any provisions in the articles
6 of organization, the operating agreement or this chapter restricting or enlarging the
7 management rights and duties of any person or group or class of persons, the
8 members shall have the right and authority to manage the affairs of the limited
9 liability company and to make all decisions with respect thereto.
- 10 (2) If the articles of organization vest management of the limited liability company in
11 one (1) or more managers, except to the extent otherwise provided in the articles of
12 organization, the operating agreement, or this chapter, the manager or managers
13 shall have exclusive power to manage the business and affairs of the limited
14 liability company. Unless otherwise provided in the articles of organization or the
15 operating agreement, managers:
- 16 (a) Shall be designated, appointed, elected, removed, or replaced by a vote,
17 approval, or consent of the majority-in-interest of the members;
- 18 (b) Shall not be required to be members of the limited liability company or natural
19 persons; and
- 20 (c) Unless they are sooner removed or sooner resign, shall hold office until their
21 successors shall have been elected and qualified.
- 22 (3) Unless otherwise set forth in a written operating agreement, a member or manager
23 of a limited liability company has the power and authority to delegate to one (1) or
24 more other persons the member's or manager's powers to manage or control the
25 business and affairs of the limited liability company, including without limitation
26 the power to delegate to agents and employees of a member, manager, or limited
27 liability company or to delegate by an agreement to other persons. This delegation

1 by a member or manager of a limited liability company shall not cause the member
2 or manager to cease to be a member or manager of the limited liability company.

3 ➔Section 109. KRS 275.170 is repealed and reenacted to read as follows:

4 Unless otherwise provided in a written operating agreement:

5 (1) A member or manager shall not be liable, responsible, or accountable in damages or
6 otherwise to the limited liability company or the members of the limited liability
7 company for any action taken or failure to act on behalf of the limited liability
8 company unless the act or omission constitutes wanton or reckless misconduct.

9 (2) Each member and manager shall account to the limited liability company and hold
10 as trustee for it any profit or benefit derived by that person without the consent of
11 more than one-half (1/2) by number of the disinterested managers, or a majority-in-
12 interest of the members from:

13 (a) Any transaction connected with the conduct or winding up of the limited
14 liability company; or

15 (b) Any use by the member or manager of its property, including, but not limited
16 to, confidential or proprietary information of the limited liability company or
17 other matters entrusted to the person as a result of his status as manager or
18 member.

19 (3) In determining whether a transaction has received the approval of a majority-in-
20 interest of the members, membership interests owned by or voted under the control
21 of the member or manager whose actions are under review in accordance with
22 subsection (2) of this section, and membership interests owned by an entity owned
23 by or voted under the control of that member or manager, shall not be counted in a
24 vote of the members to determine whether to consent, and the membership interests
25 shall not be counted in determining whether a quorum, if required by a written
26 operating agreement, exists to consider whether to consent.

27 (4) A member of a limited liability company in which management is vested in

1 managers under KRS 275.165(2) and who is not a manager shall have no duties to
2 the limited liability company or the other members solely by reason of acting in his
3 or her capacity as a member.

4 ➔Section 110. KRS 275.175 is repealed and reenacted to read as follows:

5 (1) Unless otherwise provided in the articles of organization, a written operating
6 agreement, or this chapter, the affirmative vote, approval, or consent of a majority-
7 in-interest of the members, if management of the limited liability company is vested
8 in the members, or a simple majority of the managers, each having a single vote, if
9 the management of the limited liability company is vested in managers, shall be
10 required to decide any matter connected with the business affairs of the limited
11 liability company.

12 (2) Unless otherwise provided in a written operating agreement, the affirmative vote,
13 approval, or consent of the majority-in-interest of the members shall be required to:

14 (a) Amend a written operating agreement;

15 (b) Authorize a manager or member to do any act on behalf of the limited liability
16 company that contravenes a written operating agreement, including any
17 written provision thereof which expressly limits the purpose, business, or
18 affairs of the limited liability company or the conduct thereof; or

19 (c) Amend the articles of organization to change the management of the limited
20 liability company from members to managers or from managers to members.

21 (3) Unless otherwise provided in the articles of organization, a written operating
22 agreement, or this chapter, for all purposes of this chapter, the members of a limited
23 liability company shall vote, approve, or consent in proportion to their
24 contributions, based upon the agreed value as stated in the records of the limited
25 liability company as required by KRS 275.185, made by each member to the extent
26 they have been received by the limited liability company and have not been
27 returned.

1 (4) Unless otherwise provided in the articles of organization or the written operating
2 agreement, no member of a limited liability company shall have the right to dissent
3 from an amendment to the operating agreement.

4 ➔Section 111. KRS 275.185 is repealed and reenacted to read as follows:

5 (1) A limited liability company shall keep at its principal office or other location as set
6 forth in a written operating agreement, the following:

7 (a) A current list, and all past lists, setting forth the full name and last known
8 mailing address of each member and, if any, each manager;

9 (b) A copy of the articles of organization and all amendments thereto, together
10 with executed copies of any power of attorney pursuant to which any articles
11 of amendment have been executed;

12 (c) Copies of the limited liability company's federal, state, and local income tax
13 returns and financial statements, if any, for the three (3) most recent years or,
14 if those returns and statements were not prepared, copies of the information
15 and statements provided to, or which should have been provided to, the
16 members to enable them to prepare their federal, state, and local tax returns
17 for those years;

18 (d) Copies of any effective written operating agreements and all amendments
19 thereto, and copies of any written operating agreements no longer in effect;
20 and

21 (e) Unless contained in writing in an operating agreement:

22 1. A writing setting forth the amount of cash, if any, and a statement of the
23 agreed value of other property or services, if any, contributed by each
24 member and the times at which or events upon the happening of which
25 any additional contributions are to be made;

26 2. A writing stating events, if any, upon the happening of which the limited
27 liability company is to be dissolved and its affairs wound up; and

1 3. Other writings, if any, prepared pursuant to a requirement, if any, in an
2 operating agreement.

3 (2) Upon reasonable written request, a member may, at the member's own expense,
4 inspect and copy during ordinary business hours any limited liability company
5 record, where the record is located or at a reasonable location.

6 (3) Members, if the management of the limited liability company is vested in the
7 members, or managers, if management of the limited liability company is vested in
8 managers, shall render, to the extent the circumstances render it just and reasonable,
9 true and full information of all matters affecting the members to any member, and
10 the member's agent, and to the legal representative of any deceased member or of
11 any member under legal disability.

12 (4) Failure of the limited liability company to keep or maintain any of the records or
13 information required pursuant to this section shall not be grounds for imposing
14 liability on any member or manager for the debts and obligations of the limited
15 liability company.

16 (5) A written operating agreement may impose reasonable limitations upon the use of
17 any record of or information with respect to a limited liability company. Except as
18 to limitations set forth in a written operating agreement to which a member
19 requesting information has assented, the limited liability company bears the burden
20 of proof in demonstrating the reasonableness of any restrictions imposed.

21 ➔Section 112. KRS 275.190 is repealed and reenacted to read as follows:

22 (1) Each domestic limited liability company, and each foreign limited liability company
23 authorized to transact business in this Commonwealth, shall deliver to the Secretary
24 of State for filing an annual report that sets forth:

25 (a) The name of the limited liability company and the state or country under
26 whose law it is organized;

27 (b) The address of its registered office and the name of its registered agent at that

1 office in this state;

2 (c) The address of its principal office; and

3 (d) The names and business addresses of its managers, if management is vested in
4 managers, or one (1) or more designated members, if management is vested in
5 members.

6 (2) Information in the annual report shall be current as of the date the annual report is
7 executed on behalf of the limited liability company.

8 (3) The first annual report shall be delivered to the Secretary of State between January 1
9 and June 30 of the year following the calendar year in which a domestic limited
10 liability company was organized or a foreign limited liability company was
11 authorized to transact business. Subsequent annual reports shall be delivered to the
12 Secretary of State between January 1 and June 30 of the following calendar years.

13 (4) If an annual report does not contain the information required by this section, the
14 Secretary of State shall promptly notify the reporting domestic or foreign limited
15 liability company in writing and return the report to it for completion. For purposes
16 of KRS 275.085(2)(e), an annual report returned for completion pursuant to this
17 subsection shall not be deemed to have been delivered.

18 (5) A domestic or foreign limited liability company may amend the information in its
19 last filed annual report by delivery to the Secretary of State of an amendment to the
20 annual report on such form as is provided by the Secretary of State.

21 ➔Section 113. KRS 275.195 is repealed and reenacted to read as follows:

22 (1) A limited liability company interest may be issued in exchange for consideration
23 consisting of cash, property, services rendered, or a promissory note or other
24 obligation to contribute cash or property or to perform services.

25 (2) A person may be admitted to a limited liability company as a member of the limited
26 liability company and may receive a limited liability company interest without
27 making a contribution or being obligated to make a contribution to the limited

1 liability company.

2 (3) Unless otherwise provided in the operating agreement, a person may be admitted to
3 a limited liability company as a member without acquiring a limited liability
4 company interest.

5 ➔Section 114. KRS 275.200 is repealed and reenacted to read as follows:

6 (1) An obligation of a member to make a contribution to the limited liability company
7 shall not be enforceable unless set forth in a writing signed by the member.

8 (2) Unless otherwise provided in an operating agreement, a member shall be obligated
9 to the limited liability company to perform any enforceable promise to contribute
10 cash or property or to perform services, even if the member is unable to perform
11 because of death, disability, or other reason.

12 (3) If a member does not make a required contribution of property or services, then the
13 member shall be obligated, at the option of the limited liability company, to
14 contribute cash equal to that portion of value of the stated contribution that has not
15 been made.

16 (4) Unless otherwise provided in an operating agreement, an obligation of a member to
17 make a contribution may be compromised only with the unanimous consent of the
18 members.

19 (5) Notwithstanding any compromise approved pursuant to subsection (4) of this
20 section, a creditor of a limited liability company who extends credit or otherwise
21 acts in reliance on an obligation after the member executes a writing which reflects
22 that obligation and before any such compromise is reached, may enforce the original
23 obligation.

24 ➔Section 115. KRS 275.225 is repealed and reenacted to read as follows:

25 (1) No distribution shall be made if, after giving effect to the distribution:

26 (a) The limited liability company would not be able to pay its debts as they
27 become due in the usual course of business; or

- 1 (b) The limited liability company's assets would be less than the sum of its
2 liabilities plus, unless otherwise provided in an operating agreement, the
3 amount that would be needed, if the limited liability company were to be
4 dissolved at the time of the distribution, to satisfy the preferential rights of
5 other members upon dissolution which are superior to the rights of the
6 member receiving the distribution.
- 7 (2) The limited liability company may base a determination that a distribution is not
8 prohibited under subsection (1) of this section either on:
- 9 (a) Financial statements prepared on the basis of accounting practices and
10 principles that are reasonable under the circumstances; or
- 11 (b) A fair valuation or other method that is reasonable under the circumstances.
- 12 (3) Except as provided in subsection (5) of this section, the effect of a distribution
13 under subsection (1) of this section shall be measured as of:
- 14 (a) The date the distribution is authorized if the payment occurs within one
15 hundred twenty (120) days after the date of authorization; or
- 16 (b) The date payment is made if it occurs more than one hundred twenty (120)
17 days after the date of authorization.
- 18 (4) A limited liability company's indebtedness to a member incurred by reason of a
19 distribution made in accordance with this section shall be at parity with the limited
20 liability company's indebtedness to its general unsecured creditors, except to the
21 extent subordinated by agreement.
- 22 (5) If terms of the indebtedness provide that payment of principal and interest is to be
23 made only if, and to the extent that, payment of a distribution to members could
24 then be made under this section, then indebtedness of a limited liability company,
25 including indebtedness issued as a distribution, shall not be a liability for purposes
26 of determinations made under subsection (1) of this section.
- 27 (6) If the indebtedness is issued as a distribution, then each payment of principal or

1 interest on the indebtedness shall be treated as a distribution, the effect of which
2 shall be measured on the date the payment is actually made.

3 (7) For purposes of this section, the term "distribution" shall not include amounts
4 constituting reasonable compensation for present or past services or reasonable
5 payments made in the ordinary course of business pursuant to a bona fide retirement
6 plan or other benefit program.

7 ➔Section 116. KRS 275.255 is repealed and reenacted to read as follows:

8 (1) Unless otherwise provided in a written operating agreement:

9 (a) A limited liability company interest shall be assignable in whole or in part;

10 (b) An assignment shall entitle the assignee to receive, to the extent assigned,
11 only the distributions to which the assignor would be entitled;

12 (c) An assignment of a limited liability company interest shall not dissolve the
13 limited liability company or entitle the assignee to participate in the
14 management and affairs of the limited liability company or to become or
15 exercise any rights of a member other than the right to receive distributions
16 pursuant to subsection (1)(b) of this section;

17 (d) Until the assignee of a limited liability company interest becomes a member
18 pursuant to KRS 275.265(1), the assignor shall continue to be a member and
19 to have the power to exercise any rights of a member, subject to the members'
20 right to remove the assignor pursuant to KRS 275.280(1)(c)2.;

21 (e) Until an assignee of a limited liability company interest becomes a member,
22 the assignee shall have no liability as a member solely as a result of the
23 assignment; and

24 (f) The assignor of a limited liability company interest shall not be released from
25 liability as a member solely as result of the assignment.

26 (2) A written operating agreement may provide that a member's limited liability
27 company interest may be evidenced by a certificate of limited liability company

1 interest issued by the limited liability company and may also provide for the
2 assignment or transfer of any interest represented by the certificate.

3 (3) Unless otherwise provided in a written operating agreement, the pledge of or
4 granting of a security interest, lien, or other encumbrance in or against any or all of
5 the limited liability company interest of a member shall not constitute an
6 assignment and shall not cause the member to cease to be a member or cease to
7 have the power to exercise any rights or powers of a member.

8 (4) Limitations upon the assignment or pledge of a membership interest set forth or
9 adopted in accordance with this section shall be enforced notwithstanding KRS
10 355.9-406 and 355.9-408.

11 ➔Section 117. KRS 275.260 is repealed and reenacted to read as follows:

12 (1) This section provides the exclusive remedy by which the judgment creditor of a
13 member or the assignee of a member may satisfy a judgment out of the judgment
14 debtor's limited liability company interest.

15 (2) On application to a court of competent jurisdiction by a judgment creditor of a
16 member or a member's assignee, a court may charge the judgment debtor's interest
17 in the limited liability company with payment of the unsatisfied amount of the
18 judgment. To the extent so charged, the judgment creditor has only the rights of a
19 assignee and shall have no right to participate in the management or to cause the
20 dissolution of the limited liability company. The court may appoint a receiver of the
21 share of the distributions due or to become due to the judgment debtor in respect of
22 the limited liability company interest and make all other orders, directions,
23 accounts, and inquiries the judgment creditor might have made or which the
24 circumstances of the case may require to give effect to the charging order.

25 (3) A charging order constitutes a lien on and the right to receive distributions made
26 with respect to the judgment debtor's limited liability company interest. A charging
27 order does not of itself constitute an assignment of the limited liability company

1 interest.

2 (4) The court may order a foreclosure upon the limited liability company interest
3 subject to the charging order at any time. The purchaser of the liability company
4 interest at the foreclosure sale has the rights of a assignee. At any time before
5 foreclosure, the charged limited liability company interest may be redeemed:

6 (a) By the judgment debtor;

7 (b) With property other than limited liability company property, by one (1) or
8 more of the other members; and

9 (c) With limited liability company property, by the limited liability company with
10 the consent of all members whose interest are not so charged.

11 (5) This section does not deprive a member or a member's transferee of the benefit of
12 any exemption laws applicable to the member's or transferee's limited liability
13 company interest.

14 ➔Section 118. KRS 275.285 is repealed and reenacted to read as follows:

15 A limited liability company shall be dissolved, and it shall commence to wind up its
16 affairs upon the happening of the first to occur of the following:

17 (1) The expiration of the term of the limited liability company set forth in the articles of
18 organization, if any;

19 (2) Upon the occurrence of events specified in the articles of organization or a written
20 operating agreement;

21 (3) Unless otherwise set forth in the operating agreement, the written consent of all of
22 the members of a limited liability company;

23 (4) There are no remaining members, except that the limited liability company shall not
24 be dissolved and its affairs shall not be wound up when:

25 (a) A member is admitted to the limited liability company in the manner provided
26 for in a written operating agreement, effective as of the occurrence of the
27 event that terminated the continued membership of the last remaining

1 member; or

2 (b) Unless otherwise provided in a written operating agreement, within ninety
3 (90) days after the occurrence of the event that terminated the continued
4 membership of the last remaining member, the successor-in-interest of the last
5 remaining member agrees in writing to continue the limited liability company
6 and to the admission of the successor-in-interest of that member or its
7 designee to the limited liability company as a member, effective as of the
8 occurrence of the event that terminated the continued membership of the last
9 remaining member;

10 (5) Entry of a decree of judicial dissolution under KRS 275.290; or

11 (6) Filing of a certificate of dissolution by the Secretary of State under KRS 275.295.

12 ➔Section 119. KRS 275.295 is repealed and reenacted to read as follows:

13 (1) The Secretary of State may commence a proceeding to administratively dissolve a
14 limited liability company if:

15 (a) The limited liability company does not deliver its annual report to the
16 Secretary of State within sixty (60) days after the annual report is due;

17 (b) The limited liability company is without a registered agent or registered office
18 in Kentucky for at least sixty (60) days;

19 (c) The limited liability company does not notify the Secretary of State within
20 sixty (60) days after its registered agent or registered office has been changed,
21 its registered agent has resigned, or its registered office has been discontinued;

22 or

23 (d) The limited liability company's term as set forth in its articles of organization
24 expires.

25 (2) (a) If the Secretary of State determines that one (1) or more grounds exist under
26 subsection (1) of this section for dissolving a limited liability company, the
27 Secretary of State shall serve the limited liability company with written notice

1 of the determination by first-class mail at its principal place of business
2 address.

3 (b) If the limited liability company does not correct each ground for dissolution or
4 demonstrate to the reasonable satisfaction of the Secretary of State that each
5 ground determined by the Secretary of State does not exist within sixty (60)
6 days from the date on which notice was mailed, the Secretary of State shall
7 administratively dissolve the limited liability company by signing a certificate
8 of dissolution that states the ground or grounds for dissolution and its
9 effective date. The Secretary of State shall file the original of the certificate
10 and serve a copy on the limited liability company by mailing the notice by
11 first-class mail to the limited liability company at its principal place of
12 business address. If a limited liability company is dissolved for having reached
13 the end of its period of duration, and it does not within sixty (60) days of the
14 end of its duration amend the articles of organization to extend its duration,
15 the certificate of dissolution shall be effective as of the end of the period of
16 duration as set forth in the articles of organization.

17 (3) (a) A limited liability company administratively dissolved under subsection (2) of
18 this section, other than for failure to amend the articles of organization to
19 extend the duration of the limited liability company within sixty (60) days of
20 the expiration of its term, may apply to the Secretary of State for reinstatement
21 at any time after the effective date of dissolution. The application shall:

- 22 1. State the name of the limited liability company and the effective date of
23 its administrative dissolution;
- 24 2. State that the ground or grounds for dissolution either did not exist or
25 have been eliminated;
- 26 3. State that the limited liability company's name satisfies the requirements
27 under KRS 275.100;

- 1 4. Contain a certificate from the Kentucky Department of Revenue stating
- 2 that all taxes owed by the limited liability company have been paid; and
- 3 5. Be accompanied by the reinstatement penalty and the current fee on
- 4 filing each delinquent report as provided for in KRS 275.055(1).
- 5 (b) If the Secretary of State determines that the application contains the
- 6 information required by paragraph (a) of this subsection and that the
- 7 information is correct, the Secretary of State shall:
- 8 1. Cancel the certificate of dissolution and prepare a certificate of existence
- 9 that states the determination and the effective date of existence; and
- 10 2. Serve a copy on the limited liability company in the manner provided in
- 11 subsection (2)(a) of this section.
- 12 (c) When the reinstatement is effective, the reinstatement shall relate back to and
- 13 take effect as of the effective date of the administrative dissolution, and the
- 14 limited liability company shall resume carrying on business as if the
- 15 administrative dissolution had never occurred.
- 16 (4) (a) If the Secretary of State denies a limited liability company's application for
- 17 reinstatement following administrative dissolution, the Secretary of State shall
- 18 serve the limited liability company with a written notice that explains the
- 19 reason or reasons for denial by mailing notice by first-class mail to the limited
- 20 liability company at its registered office or, if none, to the last principal office
- 21 identified on the most recent annual report, or, if none, the articles of
- 22 organization.
- 23 (b) The limited liability company may appeal the denial of reinstatement to the
- 24 Circuit Court of the county where the limited liability company's principal
- 25 office, or, if there is none in Kentucky, its registered office, is located within
- 26 thirty (30) days after service of the notice of denial by doing the following:
- 27 1. Filing a petition with the court to set aside the dissolution; and

1 2. Attaching to the petition a copy of the Secretary of State's certificate of
 2 dissolution, the limited liability company's application for reinstatement,
 3 and the Secretary of State's notice of denial.

4 (c) The court may order the Secretary of State to reinstate the dissolved limited
 5 company or may take other action the court considers appropriate.

6 (d) The court's final decision may be appealed as are other civil proceedings.

7 ➔Section 120. KRS 275.300 is repealed and reenacted to read as follows:

8 Unless otherwise provided in a written operating agreement:

9 (1) The business or affairs of the limited liability company may be wound up:

10 (a) By the members or managers who have authority pursuant to KRS 275.165 to
 11 manage the limited liability company prior to dissolution; or

12 (b) If one (1) or more of the members or managers have engaged in wrongful
 13 conduct, or upon other cause shown, by the Circuit Court for the county in
 14 which the principal office of the limited liability company is located or in
 15 which the registered office of the limited liability company is located, on
 16 application of any member, any member's legal representative, or assignee.

17 (2) A dissolved limited liability company shall continue its existence but shall not carry
 18 on any business except that appropriate to wind up and liquidate its business and
 19 affairs, including:

20 (a) Collecting its assets;

21 (b) Disposing of its properties that will not be distributed in kind to its members;

22 (c) Discharging or making provision for discharging its liabilities;

23 (d) Distributing its remaining property among its members according to their
 24 interests; and

25 (e) Doing every other act necessary to wind up and liquidate its business and
 26 affairs.

27 (3) Dissolution of a limited liability company shall not:

- 1 (a) Transfer title to the limited liability company's property;
- 2 (b) Prevent transfer of a limited liability company interest, although the
- 3 authorization to dissolve may provide for the limited liability company
- 4 restricting the transfer of the limited liability company's interest;
- 5 (c) Subject its members or managers to standards of conduct different from those
- 6 prescribed herein;
- 7 (d) Change quorum or voting requirements for its members or managers; change
- 8 provisions for selection, resignation, or removal of its members or managers;
- 9 or change provisions for amending its operating agreement;
- 10 (e) Prevent commencement of a proceeding by or against the limited liability
- 11 company in its name;
- 12 (f) Abate or suspend a proceeding pending by or against the limited liability
- 13 company on the effective date of dissolution;
- 14 (g) Terminate the authority of the registered agent of the limited liability
- 15 company;
- 16 (h) Alter the obligations and responsibilities of the limited liability company as
- 17 prescribed by applicable federal or state law with regard to the filing or
- 18 examination of all federal and state tax returns or the payment, assessment, or
- 19 collection of any federal or state tax due with respect to those returns; or
- 20 (i) Abate or suspend KRS 275.150(1).

21 ➔Section 121. KRS 275.315 is repealed and reenacted to read as follows:

22 After the dissolution of the limited liability company pursuant to KRS 275.285, the
 23 limited liability company shall file articles of dissolution with the Secretary of State
 24 which set forth:

- 25 (1) The name of the limited liability company;
- 26 (2) A statement of the subsection of KRS 275.285 pursuant to which the limited
- 27 liability company has dissolved;

- 1 (3) The effective date, which shall be a date certain, of the dissolution; and
- 2 (4) Any other information the members or managers filing the articles of dissolution
- 3 shall deem proper.

4 ➔Section 122. KRS 275.345 is repealed and reenacted to read as follows:

- 5 (1) Unless otherwise provided in writing in a written operating agreement, and subject
- 6 to any law applicable to business entities other than limited liability companies, one
- 7 (1) or more limited liability companies may merge with or into one (1) or more
- 8 other business entities with the limited liability company or other business entity
- 9 being the surviving or resulting limited liability company or other business entity.
- 10 (2) Rights or securities of or interests in a business entity that is a party to the merger
- 11 may be exchanged for or converted into cash, property, obligations, rights, or
- 12 securities of or interests in the surviving or resulting business entity or of any other
- 13 business entity.
- 14 (3) Unless otherwise provided in the articles of organization, a written operating
- 15 agreement, or a written agreement and plan of merger, no member of a limited
- 16 liability company shall have the right to dissent from a merger.
- 17 (4) A nonprofit limited liability company shall not merge with or into any business
- 18 entity which is not a domestic nonprofit limited liability company.

19 ➔Section 123. KRS 275.350 is repealed and reenacted to read as follows:

- 20 (1) Unless otherwise provided in a written operating agreement, a limited liability
- 21 company that is a party to a proposed merger shall approve the plan of merger in
- 22 KRS 275.355 by a majority-in-interest of the members.
- 23 (2) Each business entity that is a party to a proposed merger shall approve the plan of
- 24 merger in the manner and by the vote required by the laws applicable to the
- 25 business entity.
- 26 (3) Each business entity that is a party to the merger shall have the rights to abandon the
- 27 merger as provided for in the plan of merger or in the laws applicable to the

1 business entity.

2 (4) Unless otherwise provided in the articles of organization, a written operating
3 agreement, or a written agreement and plan of merger, no member of a limited
4 liability company shall have the right to dissent from a merger.

5 ➔Section 124. KRS 275.370 is repealed and reenacted to read as follows:

6 (1) A partnership or limited partnership may be converted to a limited liability company
7 pursuant to this section.

8 (2) The terms and conditions of a conversion of a partnership or limited partnership to a
9 limited liability company shall, in the case of a partnership, be approved by all the
10 partners or by a number or percentage specified for conversion in the partnership
11 agreement or, in the case of a limited partnership, by all the partners,
12 notwithstanding any provision to the contrary in the limited partnership agreement.

13 (3) After the conversion is approved under subsection (2) of this section, the
14 partnership or limited partnership shall file articles of organization with the office of
15 the Secretary of State which satisfy the requirements of KRS 275.025 and include:

16 (a) A statement that the partnership or limited partnership was converted to a
17 limited liability company from a partnership or limited partnership, as the case
18 may be;

19 (b) Its former name;

20 (c) In the case of a partnership, a statement of the number of votes cast by the
21 partners entitled to vote for and against the conversion and, if the vote is less
22 than unanimous, the number or percentage required to approve the conversion
23 under the partnership agreement; and

24 (d) If the partnership has filed a statement of registration as a limited liability
25 partnership in accordance with KRS 362.555 or a statement of qualification in
26 accordance with KRS 362.1-1001, each shall be deemed canceled as of the
27 effective date and time of the articles of organization as determined in

1 accordance with KRS 275.020; and

2 (e) In the case of a limited partnership, the limited partnership's certificate of
3 limited partnership shall be deemed canceled as of the effective date and time
4 of the articles of organization as determined in accordance with KRS 275.020.

5 (4) The conversion shall take effect when the articles of organization are filed with the
6 office of the Secretary of State or, as provided in KRS 275.020, at a later date
7 specified in the articles of organization.

8 (5) A partner or, in the case of a limited partnership, a general partner who becomes a
9 member of a limited liability company as a result of a conversion shall remain liable
10 as a partner or general partner for an obligation incurred by the partnership or
11 limited partnership before the conversion takes effect. If the other party to a
12 transaction with the limited liability company reasonably believes when entering the
13 transaction that the member undertaking the transaction is a partner in a partnership
14 or a general partner in a limited partnership, the member shall be liable for an
15 obligation incurred by the limited liability company within ninety (90) days after the
16 conversion takes effect. The partner's or general partner's liability for all other
17 obligations of the limited liability company incurred after the conversion takes
18 effect shall be that of a member as provided in this chapter. A limited partner who
19 becomes a member as a result of a conversion shall remain liable only as a limited
20 partner for an obligation incurred by the limited partnership before the conversion
21 takes effect.

22 ➔Section 125. KRS 275.375 is repealed and reenacted to read as follows:

23 (1) A partnership or limited partnership that has been converted pursuant to this chapter
24 shall be for all purposes the same entity that existed before the conversion.

25 (2) When a conversion takes effect:

26 (a) All property and contract rights owned by, and all rights, privileges, and
27 immunities of the converting partnership or limited partnership shall remain

1 vested in the converted limited liability company without assignment,
2 reversion, or impairment;

3 (b) All obligations of the converting partnership or limited partnership shall
4 continue as obligations of the converted limited liability company;

5 (c) An action or proceeding pending against the converting partnership or limited
6 partnership may be continued as if the conversion had not occurred and the
7 name of the converted limited liability company may be substituted in any
8 pending action or proceeding for the name of the converting partnership or
9 limited partnership; and

10 (d) The written operating agreement of the converted limited liability company
11 shall be binding upon each person who becomes a member of the limited
12 liability company.

13 ➔Section 126. KRS 275.380 is repealed and reenacted to read as follows:

14 (1) Subject to the Constitution of this Commonwealth:

15 (a) The laws of the state or other jurisdiction under which a foreign limited
16 liability company is organized shall govern its organization and internal
17 affairs, including the inspection of the books, records, and documents, and the
18 liability of its members, except as provided in subsection (2) of this section;
19 and

20 (b) A foreign limited liability company shall not be denied registration by reason
21 of any difference between the laws of another jurisdiction under which a
22 foreign limited liability company is organized and the laws of this
23 Commonwealth.

24 (2) A certificate of authority obtained pursuant to this chapter shall not authorize a
25 foreign limited liability company to exercise any powers or engage in any business
26 that a domestic limited liability company is forbidden to exercise or engage in by
27 the laws of this Commonwealth.

1 ➔Section 127. KRS 275.395 is repealed and reenacted to read as follows:

2 (1) A foreign limited liability company may apply for a certificate of authority to
3 transact business in this Commonwealth by delivering an application to the
4 Secretary of State for filing. The application shall set forth:

5 (a) The name of the foreign limited liability company, or if its name is
6 unavailable for use in this Commonwealth, a company name that satisfies the
7 requirements of KRS 275.410;

8 (b) The name of the state or country under whose law it is organized;

9 (c) Its date of organization and, if the limited liability company has a specific date
10 of dissolution, the latest date upon which it is to dissolve;

11 (d) The street address of the office required to be maintained in the state or other
12 jurisdiction of its formation by the laws of that state or jurisdiction or, if not
13 so required, of the principal office of the foreign limited liability company;

14 (e) The address of its registered office in this Commonwealth and the name of its
15 registered agent at that office;

16 (f) The names and usual business addresses of its current managers, if any; and

17 (g) A statement that, as of the date of filing, the foreign limited liability company
18 validly exists as a limited liability company under the laws of the jurisdiction
19 of its organization.

20 (2) A written statement of the initial registered agent consenting to serve in that
21 capacity shall accompany an application for the certificate of authority.

22 ➔Section 128. KRS 275.400 is repealed and reenacted to read as follows:

23 (1) A foreign limited liability company authorized to transact business in this
24 Commonwealth shall obtain an amended certificate of authority from the Secretary
25 of State if it changes:

26 (a) Its real name;

27 (b) The latest date on which it is to dissolve; or

1 (c) The state or country of its organization.

2 (2) The requirements of KRS 275.395 for obtaining an original certificate of authority
3 shall apply to obtaining an amended certificate under this section.

4 ➔Section 129. KRS 275.405 is repealed and reenacted to read as follows:

5 (1) A certificate of authority shall authorize the foreign limited liability company to
6 which it is issued to transact business in this Commonwealth subject to the right of
7 the Commonwealth to revoke the certificate as provided in this chapter.

8 (2) A foreign limited liability company with a valid certificate of authority shall have
9 the same but no greater rights as, and shall have the same but no greater privileges
10 as, and except as otherwise provided by this chapter shall be subject to the same
11 duties, restrictions, penalties, and liabilities now or later imposed on, a domestic
12 limited liability company.

13 (3) This chapter shall not authorize this Commonwealth to regulate the organization or
14 internal affairs, including the inspection of books, records and documents, of a
15 foreign limited liability company authorized to transact business in this
16 Commonwealth.

17 ➔Section 130. KRS 275.410 is repealed and reenacted to read as follows:

18 (1) If the real name of a foreign limited liability company does not satisfy the
19 requirements of KRS 275.100, the foreign limited liability company, to obtain or
20 maintain a certificate of authority to transact business in this Commonwealth:

21 (a) May add to its name for use in this Commonwealth:

22 1. The words "limited liability company," "limited company," "professional
23 limited liability company," or "professional liability company."
24 The word "limited" may be abbreviated as "Ltd.," and the word
25 "Company" may be abbreviated as "Co."; or

26 2. The abbreviations "LLC," "LC," "PLLC," or "PLC"; or

27 (b) May use a fictitious name to transact business in this Commonwealth if its

1 real name is unavailable and it delivers to the Secretary of State for filing a
2 certificate by a person authorized to execute documents pursuant to KRS
3 275.045(6) that the limited liability company has adopted the fictitious name.

4 (2) Except as authorized by subsections (3) and (4) of this section, the name, including
5 a fictitious name, of a foreign limited liability company shall be distinguishable
6 from any name of record with the Secretary of State.

7 (3) A foreign limited liability company may apply to the Secretary of State for
8 authorization to use in this Commonwealth the name of another business entity,
9 organized or authorized to transact business in this Commonwealth, that is not
10 distinguishable from a name of record with the Secretary of State. The Secretary of
11 State shall authorize use of the name applied for if:

12 (a) The business entity consents to the use in writing and submits an undertaking
13 in form satisfactory to the Secretary of State to change its name to a name that
14 is distinguishable upon the records of the Secretary of State from the name of
15 the applying limited liability company; or

16 (b) The applicant delivers to the Secretary of State a certified copy of a final
17 judgment of a court of competent jurisdiction establishing the applicant's right
18 to use the name applied for in this Commonwealth.

19 (4) A foreign limited liability company may use in this Commonwealth the name,
20 including the fictitious name, of another business entity that is used in this
21 Commonwealth if the business entity is organized or authorized to transact business
22 in this Commonwealth and the foreign limited liability company:

23 (a) Has merged with the other business entity;

24 (b) Has been formed by reorganization of the business entity; or

25 (c) Has acquired all or substantially all of the assets, including the name, of the
26 other business entity.

27 (5) If a foreign limited liability company authorized to transact business in this

1 Commonwealth changes its name to one that does not satisfy the requirements of
 2 this section, it shall not transact business in this Commonwealth under the changed
 3 name until it adopts a name satisfying the requirements of this section and obtains
 4 an amended certificate of authorization under KRS 275.400.

5 ➔Section 131. KRS 279.010 is repealed and reenacted to read as follows:

6 As used in this chapter, unless the context requires otherwise:

- 7 (1) "Acquire" means to construct, purchase, obtain by lease, devise, gift, or by eminent
 8 domain, or to obtain by any other lawful means;
- 9 (2) "Board" means the board of directors of a corporation formed under this chapter;
- 10 (3) "Business entity" means a domestic and foreign limited liability company,
 11 corporation, general partnership, limited partnership, business or statutory trust, and
 12 not-for-profit unincorporated association;
- 13 (4) "Corporation" means a profit or nonprofit corporation formed under the laws of any
 14 state or a foreign country;
- 15 (5) "Farm Credit Act" means Section 12 of the Federal Farm Credit Act of 1935 and the
 16 amendments thereto;
- 17 (6) "Federal agency" means and includes the United States, the President of the United
 18 States, and all federal authorities, instrumentalities and agencies in the ordinary
 19 sense;
- 20 (7) "Improve" means to construct, reconstruct, extend, enlarge, alter, better, or repair;
- 21 (8) "Member" means and includes each person signing the articles of incorporation of a
 22 corporation formed under this chapter, each person later admitted to membership
 23 according to law or according to the articles of incorporation or bylaws of the
 24 corporation, and each common stockholder in a corporation organized under this
 25 chapter that has capital stock;
- 26 (9) "Name of record with the Secretary of State" means any real, fictitious, reserved,
 27 registered, or assumed name of a business entity;

1 (10) "Obligations" means and includes negotiable bonds, notes, debentures, interim
 2 certificates or receipts and all other evidences of indebtedness either issued or the
 3 payment thereof assumed by a corporation organized under this chapter;

4 (11) "Real-name" shall have the meaning set forth in KRS 365.015; and

5 (12) "System" means and includes any plant, works, facilities, and properties, and all
 6 parts thereof and appurtenances thereto, used or useful in the generation,
 7 production, transmission, or distribution of electric energy.

8 ➔Section 132. KRS 279.030 is repealed and reenacted to read as follows:

9 (1) The articles of incorporation shall set forth:

10 (a) The name of the corporation, which shall be distinguishable from any name of
 11 record with the Secretary of State;

12 (b) The purpose for which it is formed;

13 (c) The place, including the county, where its principal office will be located;

14 (d) A reasonable description of the territory in which its operations are to be
 15 conducted;

16 (e) The number of directors;

17 (f) The names and post office addresses of the directors who are to manage the
 18 affairs of the corporation for the first year of its existence, or until the first
 19 meeting called to elect directors, or until the successors of the first directors
 20 are elected and have qualified;

21 (g) The period limited for the duration of the corporation, or that the corporation
 22 is to be perpetual;

23 (h) If the corporation is organized without capital stock, the terms upon which
 24 members may be admitted and the terms upon which their membership shall
 25 terminate;

26 (i) If the corporation is organized with capital stock, the amount of the stock, the
 27 number of shares into which it is divided and the par value; and

- 1 (j) If the capital stock is divided into common and preferred stock, as it may be,
2 the number of shares to which preference is granted and the number of shares
3 to which no preference is granted, and the nature and definite extent of the
4 preference and privileges granted to each.
- 5 (2) The articles of incorporation may contain any other lawful provision that the
6 incorporators choose to insert for the purpose of regulating the business and affairs
7 of the corporation, for the purpose of creating, defining, limiting or regulating the
8 rights, powers and duties of the corporation and its board of directors and members,
9 and the exercise of any such powers, or for the purpose of creating or defining the
10 rights and privileges of the members of the corporation among themselves,
11 including separation of members into classes or districts and providing for
12 representation of each class or district on the board of directors.
- 13 (3) A corporation may apply to the Secretary of State for authorization to use a name
14 that is not distinguishable upon the Secretary of State's records. The Secretary of
15 State shall authorize use of the name applied for if:
- 16 (a) The other entity consents to the use in writing and submits an undertaking in
17 form satisfactory to the Secretary of State to change its name to a name that is
18 distinguishable upon the records of the Secretary of State from the name of the
19 applying corporation; or
- 20 (b) The applicant delivers to the Secretary of State a certified copy of the final
21 judgment of a court of competent jurisdiction establishing the applicant's right
22 to use the name applied for in this state.
- 23 (4) A corporation may use the name, including the fictitious name, of another entity
24 that is used in this state if the other entity is incorporated, organized, or authorized
25 to transact business in this state, and the proposed user corporation:
- 26 (a) Has merged with the other entity;
- 27 (b) Has been formed by reorganization of the other entity; or

1 (c) Has acquired all or substantially all of the assets, including the name, of the
2 other entity.

3 (5) This chapter does not control the use of assumed names.

4 (6) The filing of articles of incorporation under the particular name shall not
5 automatically prevent the use of that name or protect that name from use by other
6 persons.

7 ➔Section 133. KRS 279.060 is repealed and reenacted to read as follows:

8 The words "Rural Electric Cooperative" shall not be used in the real, fictitious, or
9 assumed name of any corporation, limited liability company, partnership, limited
10 partnership, or other business entity other than one (1) formed under this chapter.

11 ➔Section 134. KRS 279.310 is repealed and reenacted to read as follows:

12 As used in KRS 279.320 to 279.600, unless the context requires otherwise:

13 (1) "Cooperative" means any corporation organized under KRS 279.320 to 279.600 or
14 which becomes subject to those sections in the manner provided therein;

15 (2) "Person" means any natural person, firm, association, corporation, business trust, or
16 partnership;

17 (3) As used in this chapter, the term "telephone service" shall include in its meaning
18 communications services of all kinds allowed to any other telephone utility,
19 authorized by regulatory agency and with some unregulated, that being the
20 transmission of voice, data, sounds, signals, pictures, writing, or signs of all kinds,
21 by use of wire, radio, light, electromagnetic impulse, broadband (wideband)
22 spectrum, or any other transmission mode and facility used in rendition of such
23 services; but shall not include in their meaning message telegram service, or radio
24 broadcasting services or facilities within the meaning of Section 153(O) of the
25 Federal Communications Act of 1934, as amended;

26 (4) "Acquire" means to construct, purchase, obtain by lease, devise, gift, or eminent
27 domain, or to obtain by any other lawful means;

- 1 (5) "Board" means the board of trustees of a corporation formed under KRS 279.320 to
2 279.600;
- 3 (6) "Federal agency" means and includes the United States, the President of the United
4 States, and all federal authorities, instrumentalities, and agencies in the ordinary
5 sense;
- 6 (7) "Improve" means to construct, reconstruct, extend, enlarge, alter, better, or repair;
- 7 (8) "Member" means and includes each person signing the articles of incorporation of a
8 corporation formed under KRS 279.320 to 279.600, each person later admitted to
9 membership according to law or according to the articles of incorporation or bylaws
10 of the corporation, and each common stockholder in a corporation, having capital
11 stock, organized under KRS 279.320 to 279.600;
- 12 (9) "Obligations" means and includes negotiable bonds, notes, debentures, interim
13 certificates or receipts, and all other evidences of indebtedness either issued or the
14 payment thereof assumed by a corporation organized under KRS 279.320 to
15 279.600;
- 16 (10) "System" means and includes any plant, works, facilities, and properties, and all
17 parts thereof and appurtenances thereto, used or useful in the operation and
18 maintenance of telephone communication service;
- 19 (11) "Rural area" shall be deemed to mean any area of this state not included within the
20 boundaries of any incorporated or unincorporated city or of a consolidated local
21 government, having a population in excess of fifteen hundred (1,500) inhabitants;
- 22 (12) "Telephone company" means any natural person, firm, association, corporation, or
23 partnership owning, leasing, or operating any line, facility, or system used in the
24 furnishing of telephone service within this state;
- 25 (13) "Business entity" means a domestic and foreign limited liability company,
26 corporation, general partnership, limited partnership, business or statutory trust, and
27 not-for-profit unincorporated association;

1 (14) "Corporation" means a profit or nonprofit corporation formed under the laws of any
2 state or a foreign country;

3 (15) "Name of record with the Secretary of State" means any real, fictitious, reserved,
4 registered, or assumed name of a business entity; and

5 (16) "Real name" shall have the meaning set forth in KRS 365.015.

6 ➔Section 135. KRS 279.340 is repealed and reenacted to read as follows:

7 (1) The name of a cooperative shall include the words "Telephone,"
8 "Telecommunications," "Company," or "Corporation" and the abbreviation "Inc.,"
9 unless, in an affidavit made by its president or vice president, and filed with the
10 Secretary of State, or in an affidavit made by a person signing articles of
11 incorporation, consolidation, merger or conversion, which relate to such
12 cooperative, and filed, together with any such articles, with the Secretary of State, it
13 shall appear that the cooperative desires to do business in another state and is or
14 would be precluded therefrom by reason of the inclusion of such words or either
15 thereof in its name. The name may include the word "Cooperative."

16 (2) Except as authorized by subsection (3), (4), or (5) of this section, the name of a
17 cooperative shall be distinguishable from any name of record with the Secretary of
18 State.

19 (3) This section shall not apply to any corporation which becomes subject to KRS
20 279.310 to 279.600 by complying with the provisions of KRS 279.470, which does
21 business in this state pursuant to KRS 279.570 and which elects to retain a
22 corporate name which does not comply with this section.

23 (4) A cooperative may apply to the Secretary of State for authorization to use a name
24 that is not distinguishable from a name of record with the Secretary of State. The
25 Secretary of State shall authorize use of the name applied for if:

26 (a) The other entity consents to the use in writing and submits an undertaking in
27 form satisfactory to the Secretary of State to change its name to a name that is

1 distinguishable upon the records of the Secretary of State from the name of the
2 applying cooperative; or

3 (b) The applicant delivers to the Secretary of State a certified copy of the final
4 judgment of a court of competent jurisdiction establishing the applicant's right
5 to use the name applied for in this state.

6 (5) A cooperative may use the name, including the fictitious name, of another entity
7 that is used in this state, if the other entity is incorporated, organized, or authorized
8 to transact business in this state and the proposed user cooperative:

9 (a) Has merged with the other entity;

10 (b) Has been formed by reorganization of the other entity; or

11 (c) Has acquired all or substantially all of the assets, including the name, of the
12 other entity.

13 (6) This chapter does not control the use of assumed names.

14 (7) The filing of articles of incorporation under the particular name shall not
15 automatically prevent the use of that name or protect that name from use by other
16 persons.

17 ➔Section 136. KRS 304.38-040 is repealed and reenacted to read as follows:

18 (1) A corporation, limited liability company, or partnership may apply to the executive
19 director for and obtain a certificate of authority to establish and operate a health
20 maintenance organization in compliance with this subtitle.

21 (2) Health maintenance organizations which are corporations may be organized by
22 applying the provisions of KRS Chapter 271B, if for profit, and KRS Chapter 273,
23 if for nonstock, nonprofit, to the extent that the same are not inconsistent with the
24 express provisions of this subtitle.

25 (3) Each application for a certificate of authority shall be submitted to the executive
26 director upon a form prescribed by him and shall set forth or be accompanied by:

27 (a) Evidence that the applicant has been issued a certificate of need in accordance

- 1 with the provisions of KRS Chapter 216B or evidence that no certificate of
2 need is required by KRS Chapter 216B;
- 3 (b) Articles of incorporation, articles of organization, partnership agreement, or
4 other applicable documents in quadruplicate, acknowledged and verified by
5 the applicant;
- 6 (c) The initial bylaws, operating agreement, or other equivalent documents of the
7 organization in triplicate, or any other similar documents;
- 8 (d) A statement which shall include describing the health maintenance
9 organization:
- 10 1. The health services to be offered;
- 11 2. The financial risks to be assumed;
- 12 3. The initial geographic area to be served;
- 13 4. Pro forma financial projections for the first three (3) years of operations
14 including the assumptions the projections are based upon;
- 15 5. The sources of working capital and funding;
- 16 6. A description of the persons to be covered by the health maintenance
17 organization;
- 18 7. Any proposed reinsurance arrangements;
- 19 8. Any proposed management, administrative, or cost-sharing
20 arrangements; and
- 21 9. A description of the health maintenance organization's proposed method
22 of marketing;
- 23 (e) The names, addresses, and positions of the initial board of directors, board of
24 trustees, or other governing body responsible for the conduct of the affairs of
25 the applicant;
- 26 (f) Any proposed evidence of coverage to be issued by the applicant to
27 individuals, enrollees, groups, or other contract holders; and

1 (g) Evidence of financial responsibility as provided in KRS 304.38-060.

2 ➔Section 137. KRS 304.38-070 is repealed and reenacted to read as follows:

3 (1) This subsection applies to a corporation or limited liability company applying for
4 and holding a certificate of authority as a health maintenance organization:

5 (a) Except as provided in paragraph (b) of this subsection, to qualify for authority
6 to act as a health maintenance organization, a corporation or limited liability
7 company shall possess and thereafter maintain unimpaired paid-in capital
8 stock of one million dollars (\$1,000,000), and, when first so authorized, shall
9 possess initial free surplus of not less than two million dollars (\$2,000,000);

10 (b) A corporation holding a valid certificate of authority to transact business as a
11 health maintenance organization in Kentucky immediately prior to July 15,
12 1986, may, if otherwise qualified therefor, continue to be so authorized while
13 meeting the requirements for protection against insolvency required for such
14 authority immediately prior to July 15, 1986. Notwithstanding the other
15 provisions hereof, the exception provided in this paragraph shall cease to
16 apply to any such health maintenance organization from and after the date it
17 has accumulated capital and surplus equal to or in excess of the capital and
18 surplus required by paragraph (a) of this subsection; and

19 (c) Each corporation authorized as a health maintenance organization shall at all
20 times maintain bona fide additional surplus in the amount of two hundred fifty
21 thousand dollars (\$250,000) and shall at all times comply with the risk-based
22 capital requirements as established in administrative regulations promulgated
23 by the executive director. A corporation holding a valid certificate of authority
24 to transact business as a health maintenance organization in Kentucky
25 immediately prior to July 15, 1986, may, if otherwise qualified therefor,
26 continue to be so authorized while meeting the requirements for protection
27 against insolvency as required for such authority immediately prior to July 15,

1 1986. The exception provided in this paragraph shall cease to apply to any
2 such health maintenance organization from and after the date upon which it
3 has accumulated additional surplus equal to or in excess of the additional
4 surplus required by this subsection.

5 (2) This subsection applies to a partnership applying for or holding a certificate of
6 authority as a health maintenance organization:

7 (a) Except as provided in paragraph (b) of this subsection, to qualify for authority
8 to act as a health maintenance organization, a partnership shall possess, when
9 first so authorized, a total of at least three million dollars (\$3,000,000) in its
10 capital accounts. Thereafter, a partnership authorized as a health maintenance
11 organization shall possess and maintain a total of at least one million two
12 hundred fifty thousand dollars (\$1,250,000) in its capital accounts and shall
13 comply at all times with the risk-based capital requirement established in
14 administrative regulations promulgated by the executive director;

15 (b) A partnership holding a valid certificate of authority to transact business as a
16 health maintenance organization in Kentucky immediately prior to July 15,
17 1986, may, if otherwise qualified therefor, continue to be so authorized while
18 meeting the requirements for protection against insolvency required for such
19 authority immediately prior to July 15, 1986. The exception provided for in
20 this paragraph shall cease to apply to any such health maintenance
21 organization from and after the date upon which the total of the funds which it
22 has accumulated in its capital accounts equal or exceed the total of the funds
23 in its capital accounts required by this subsection.

24 (3) A corporation, partnership, or limited liability company applying for and holding a
25 certificate of authority as a health maintenance organization which by contract
26 manages care and processes health care claims solely for Medicaid-eligible
27 enrollees and the Kentucky Children's Health Insurance Program shall comply with

1 risk-based capital (RBC) requirements as follows:

2 (a) For purposes of this subsection, risk-based capital shall be determined in
 3 accordance with the risk-based capital requirements for health maintenance
 4 organizations established under this subtitle and any administrative regulation
 5 promulgated pursuant to KRS Chapter 13A, except as otherwise provided in
 6 this subsection. A corporation, partnership, or limited liability company
 7 applying for and holding a certificate of authority as a health maintenance
 8 organization which by contract manages care and processes health care claims
 9 solely for Medicaid-eligible enrollees and the Kentucky Children's Health
 10 Insurance Program shall comply with the same risk-based capital requirements
 11 as other health maintenance organizations, except that no additional phase-in
 12 or risk-based capital reports shall be required for 2000 or 2001, and the risk-
 13 based capital levels shall be established in accordance with paragraph (b) of
 14 this subsection;

15 (b) For the risk-based capital reports required to be filed by health maintenance
 16 organizations which manage care and process health care claims solely for
 17 Medicaid-eligible enrollees and the Kentucky Children's Health Insurance
 18 Program, the risk-based capital levels shall be defined as follows:

- 19 1. "Company Action Level RBC" means the product of two (2.0) and its
 20 Authorized Control Level RBC;
- 21 2. "Regulatory Action Level RBC" means the product of one and five-
 22 tenths (1.5) and its Authorized Control Level RBC;
- 23 3. "Authorized Control Level RBC" means the product of four-tenths (.40)
 24 and the risk-based capital after covariance determined under the risk-
 25 based capital formula in accordance with the RBC instruction; and
- 26 4. "Mandatory Control Level RBC" means the product of seven-tenths
 27 (.70) and the Authorized Control Level RBC; and

(c) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization managing care, processing health care claims, or providing health benefits to groups or individuals in addition to Medicaid-eligible and Kentucky Children's Health Insurance Program enrollees shall comply with the risk-based capital requirements of subsection (1) of this section and this subtitle, and shall not be eligible to calculate its risk-based capital according to this subsection.

➔Section 138. KRS 311A.070 is repealed and reenacted to read as follows:

(1) When a complaint is filed against an ambulance service, emergency medical services provider, or an emergency medical services educational institution or an employee or volunteer thereof, or when the office of the board is contemplating action against an ambulance service, emergency medical services provider, or emergency medical services educational institution or an employee or volunteer thereof, written notice of the complaint or proposed action shall be sent to:

- (a) The county judge/executive, in the event of a county-operated ambulance service, emergency medical services provider, or educational institution;
- (b) The mayor, in the event of a city-operated ambulance service, emergency medical services provider, or educational institution;
- (c) The mayor, in the event of an urban-county government-operated ambulance service, emergency medical services provider, or educational institution;
- (d) The chairman of the fire protection district, in the event of a fire district-operated ambulance service, emergency medical services provider, or educational institution;
- (e) The head of the public agency, in the event of an ambulance service, emergency medical services provider, or educational institution operated by a public agency other than specified in paragraphs (a) to (d) of this subsection;

- 1 (f) The president, chancellor, or other officer in charge of an educational
 2 institution operated, in the event of an ambulance service or educational
 3 institution;
- 4 (g) The chief operating officer or president of a nonprofit corporation, corporation
 5 for profit, limited liability company, or other business entity, in the event of an
 6 ambulance service, emergency medical services provider, or educational
 7 institution operated by the business entity; and
- 8 (h) Both the ambulance service, emergency medical services provider, or
 9 educational institution officials specified in this subsection and the officials of
 10 any public agency contracting for services.

- 11 (2) The notice specified in this section shall be in addition to any notice provided to any
 12 other person or organization.

13 ➔Section 139. KRS 313.240 is repealed and reenacted to read as follows:

- 14 (1) (a) No person shall practice or offer to practice dentistry or dental surgery under
 15 the name of any company, association, or corporation except the name of a
 16 professional service corporation, established under KRS Chapter 274, a
 17 professional limited liability company established under KRS Chapter 275, a
 18 partnership established under the Kentucky Uniform Partnership Act, or a
 19 partnership established under the Kentucky Revised Uniform Partnership Act,
 20 or as provided under KRS 313.197. Any person practicing or offering to
 21 practice dentistry or dental surgery shall practice under his or her own name;
 22 the name of a professional service corporation, professional limited liability
 23 company, or partnership, which includes his or her name; or the name of a
 24 deceased or incapacitated dentist for whom the person practicing dentistry has
 25 contracted to perform continuing operations.
- 26 (b) No such person shall conduct a dental office in his or her name nor advertise
 27 his or her name in connection with any dental office unless he or she

1 personally performs services as a dentist or dental surgeon in such office or
 2 personally supervises such services as are performed in such office during a
 3 portion of the time such office is operated by him or her only, and shall not
 4 use his or her name in connection with that of any other dentist, except as
 5 provided for deceased or incapacitated dentists in KRS 313.197.

6 (2) No person shall be an incorporator, director, officer, member, manager, or
 7 shareholder in more than three (3) professional service corporations, three (3)
 8 professional limited liability companies, or three (3) partnerships, or any three (3) of
 9 these business entities, rendering dental or dental surgery services. No dentist or
 10 dental surgeon or group of dentists or dental surgeons shall practice in more than
 11 three (3) locations.

12 ➔Section 140. KRS 322.010 is repealed and reenacted to read as follows:

13 As used in this chapter, unless the context requires otherwise:

14 (1) "Board" means the State Board of Licensure for Professional Engineers and Land
 15 Surveyors;

16 (2) "Engineer" means a person who is qualified to engage in the practice of professional
 17 engineering by reason of special knowledge and use of:

18 (a) The mathematical, physical, and engineering sciences; and

19 (b) The principles and methods of engineering analysis and design, acquired by
 20 engineering education and practical engineering experience;

21 (3) "Professional engineer" means a person who is licensed as a professional engineer
 22 by the board;

23 (4) "Engineering" means any professional service or creative work, the adequate
 24 performance of which requires engineering education, training, and experience as an
 25 engineer.

26 (a) "Engineering" shall include:

27 1. Consultation, investigation, evaluation, planning, certification, and

- 1 design of engineering works and systems;
- 2 a. Engineering design and engineering work associated with
- 3 design/build projects;
- 4 b. Engineering works and systems which involve earth materials,
- 5 water or other liquids, and gases;
- 6 c. Planning the use of land, air, and waters; and
- 7 d. Performing engineering surveys and studies;
- 8 2. The review of construction for the purpose of assuring compliance with
- 9 drawings and specifications; any of which embraces this service or
- 10 work, either public or private, in connection with any utilities, structures,
- 11 certain buildings, building systems, machines, equipment, processes,
- 12 work systems, or projects with which the public welfare or the
- 13 safeguarding of life, health, or property is concerned, when that
- 14 professional service or work requires the application of engineering
- 15 principles and data;
- 16 3. The teaching of engineering design courses in any program accredited by
- 17 the Engineering Accreditation Commission of the Accreditation Board
- 18 for Engineering and Technology or any engineering program deemed
- 19 equivalent by the board;
- 20 4. The negotiation or solicitation of engineering services on any project in
- 21 this state, regardless of whether the persons engaged in the practice of
- 22 engineering:
- 23 a. Are residents of this state;
- 24 b. Have their principal place of business in this state; or
- 25 c. Are in responsible charge of the engineering services performed;
- 26 and
- 27 5. The services of a professional engineer who engages in the practice of

1 land surveying incident to the practice of engineering that does not relate
2 to the location or determination of land boundaries.

3 (b) "Engineering" shall not include the professional services performed by
4 persons who:

5 1. Develop or administer construction project safety programs,
6 construction safety compliance, construction safety rules or regulations,
7 or related administrative regulations; or

8 2. Only operate or maintain machinery or equipment;

9 (5) "Practice of engineering" means the performance of any professional service
10 included in subsection (4)(a) of this section;

11 (6) "Engineer in training" means a person who has passed the Fundamentals of
12 Engineering Examination and is otherwise qualified to earn experience toward
13 licensure as a professional engineer;

14 (7) "Responsible charge of engineering" means direct control and personal supervision
15 of engineering, or teaching experience with the rank equivalent to assistant
16 professor or higher in a board-approved engineering program;

17 (8) "Land surveyor" means a person who is qualified to engage in the practice of land
18 surveying by reason of special knowledge and use of mathematics, the physical and
19 applied sciences, and the principles and methods of land surveying, acquired by
20 education and practical experience in land surveying;

21 (9) "Professional land surveyor" means a person who is licensed as a professional land
22 surveyor by the board;

23 (10) "Land surveying" means any professional service or work, the adequate
24 performance of which requires the education, training, and experience as a land
25 surveyor.

26 (a) "Land surveying" shall include but not be limited to the following:

27 1. Measuring and locating, establishing, or reestablishing lines, angles,

elevations, natural and man-made features in the air, on the surface and immediate subsurface of the earth, within underground workings, and on the beds or surfaces of bodies of water involving the:

- a. Determination or establishment of the facts of size, shape, topography, and acreage;
- b. Establishment of photogrammetric and geodetic control that is published and used for the determination, monumentation, or description of property boundaries;
- c. Subdivision, division, and consolidation of lands;
- d. Measurement of existing improvements, including condominiums, after construction and the preparation of plans depicting existing improvements, if the improvements are shown in relation to property boundaries;
- e. Layout of proposed improvements, if those improvements are to be referenced to property boundaries;
- f. Preparation of subdivision record plats;
- g. Determination of existing grades and elevations of roads and land;
- h. Creation and perpetuation of alignments related to maps, record plats, field note records, reports, property descriptions, and plans and drawings that represent them; and
- i. Certification of documents;

2. The negotiation or solicitation of land surveying services on any project in this state, regardless of whether the persons engaged in the practice of land surveying:

- a. Are residents of this state;
- b. Have their principal office or place of business in this state; or
- c. Are in responsible charge of the land surveying services or work

1 performed; and

2 3. The preparation of survey descriptions for use in legal instruments
3 affecting real property or property rights. "Land surveying" does not
4 include the preparation of a physical description that identifies and
5 describes the tract, parcel, or lot by reference to the tract, parcel, lot,
6 block, or unit number of any subdivision, or other summary identifier
7 appearing on a properly recorded plat of record, or by reference to a deed
8 of record.

9 (b) "Land surveying" shall not include:

10 1. The measurement of crops or agricultural land area under any
11 agricultural program sponsored by an agency of the federal government
12 or the state of Kentucky;

13 2. The services of a professional engineer who engages in the practice of
14 land surveying incident to the practice of engineering, if the land
15 surveying work does not relate to the location or determination of land
16 boundaries; or

17 3. The design of grades and elevations of roads and land;

18 (11) "Practice of land surveying" means the performance of any professional service
19 included in subsection (10)(a) of this section;

20 (12) "Land surveyor in training" means a person who has passed the Fundamentals of
21 Land Surveying Examination and is otherwise qualified to earn experience toward
22 licensure as a professional land surveyor;

23 (13) "Responsible charge of land surveying" means direct control and personal
24 supervision of land surveying, or teaching experience with the rank equivalent to
25 assistant professor or higher in a board-approved land surveying program;

26 (14) "Business entity" means a corporation, partnership, limited liability company,
27 limited partnership, or firm;

1 (15) "Offer to practice" means:

2 (a) A promise or commitment to engage in any act directly related to engineering
3 or land surveying;

4 (b) Undertaking to engage in the practice of engineering or land surveying; or

5 (c) Any claim, express or implied, by any person representing himself or herself
6 to be a professional engineer or professional land surveyor;

7 (16) "Certification" means affixing a seal or stamp, signature, and date by a professional
8 engineer or professional land surveyor to represent that the services or work
9 addressed therein was performed by that professional engineer or professional land
10 surveyor according to his or her knowledge, information, and belief, and that it was
11 completed in accordance with applicable standards of practice. "Certification" shall
12 not mean a guaranty or warranty, either express or implied;

13 (17) The "Fundamentals of Engineering Examination" means the examination with that
14 name developed by the National Council of Examiners for Engineering and
15 Surveying;

16 (18) The "Fundamentals of Land Surveying Examination" means the examination with
17 that name developed by the National Council of Examiners for Engineering and
18 Surveying;

19 (19) The "Principles and Practice of Engineering Examination" means the examination
20 with that name developed by the National Council of Examiners for Engineering
21 and Surveying; and

22 (20) The "Principles and Practice of Land Surveying Examination" means the
23 examination with that name developed by the National Council of Examiners for
24 Engineering and Surveying.

25 ➔Section 141. KRS 322.060 is repealed and reenacted to read as follows:

26 (1) (a) A business entity shall not engage in the practice of engineering in this state
27 unless:

- 1 1. At least one (1) of its principals, officers, or a designated employee is a
2 professional engineer who is in responsible charge of the engineering
3 work; and
- 4 2. The board has issued a permit to the business entity.
- 5 (b) To apply for a permit, a business entity offering engineering services in this
6 state shall file with the board, on a form prescribed by the board:
 - 7 1. The names and addresses of all principals and officers;
 - 8 2. The license number of principals, officers, and employees who are
9 professional engineers in responsible charge of the business entity's
10 practice of engineering in this state;
 - 11 3. A list of locations of all offices in this state at which the business entity
12 offers professional engineering services;
 - 13 4. A statement of qualifications for the permit; and
 - 14 5. References as required by administrative regulations promulgated by the
15 board.
- 16 (c) If more than one (1) place of business is maintained in this state, a
17 professional engineer shall be in responsible charge of the engineering work
18 for each office.
- 19 (d) A professional engineer who renders occasional, part-time, or consulting
20 engineering services to or for a business entity required to hold a permit from
21 the board under this section shall not be designated as the person in
22 responsible charge of the engineering work.
- 23 (e) A business entity holding a permit shall advise the board in writing within
24 thirty (30) days of any change of status in those items listed in paragraph (b)
25 of this subsection.
- 26 (f) Individual professional engineers providing engineering services in their own
27 names, or architectural firms offering engineering services incident to their

1 practice, shall be excluded from the provisions of this subsection.

2 (2) (a) A business entity shall not engage in the practice of land surveying in this
3 state unless:

4 1. At least one (1) of its principals, officers, or a designated employee is a
5 professional land surveyor in direct responsible charge of the land
6 surveying work; and

7 2. The board has issued a permit to the business entity.

8 (b) To apply for a permit, a business entity offering land surveying services in this
9 state shall file with the board, on a form prescribed by the board:

10 1. The names and addresses of all principals and officers;

11 2. The license numbers of the principals, officers, and employees who are
12 professional land surveyors in responsible charge of the practice of land
13 surveying in this state;

14 3. A list of locations of all offices in this state at which the business entity
15 offers professional land surveying services;

16 4. A statement of qualifications for the services relating to the permit; and

17 5. References as required by administrative regulations promulgated by the
18 board.

19 (c) If more than one (1) place of business is maintained in this state, a
20 professional land surveyor shall be in responsible charge of the land surveying
21 work for each office.

22 (d) A professional land surveyor who renders occasional, part-time, or consulting
23 services to or for a business entity required to hold a permit from the board
24 under this section shall not be designated as the person in responsible charge
25 of the land surveying activity of the firm.

26 (e) A business entity holding a permit shall advise the board in writing within
27 thirty (30) days of any change of status.

- 1 (f) Individual professional land surveyors providing land surveying services in
2 their own names shall be excluded from the provisions of this subsection.
- 3 (3) (a) After a business entity applies for a professional engineering or professional
4 land surveying permit and pays the proper fees, the board shall review the
5 application and, upon approval, shall issue a permit.
- 6 (b) The board may suspend, revoke, or refuse to issue a permit for violation of the
7 code of professional practice and conduct.
- 8 (c) The expiration date and renewal period for each permit and renewal
9 procedures shall be established by administrative regulations promulgated by
10 the board.
- 11 (4) (a) No business entity shall be relieved of responsibility for the conduct or acts of
12 its agent, employees, or officers by reason of its compliance with this section.
- 13 (b) No individual practicing professional engineering or professional land
14 surveying shall be relieved of the responsibility for professional services
15 performed by reason of the individual's employment or relationship with a
16 business entity holding a permit under this section.
- 17 (5) Disciplinary action against a business entity holding a permit under this section
18 shall be administered in the same manner and on the same grounds as disciplinary
19 action against an individual professional engineer or professional land surveyor.
- 20 (6) The Secretary of State shall not accept articles of incorporation, articles of
21 organization, statement of qualification or certificate of limited partnership or an
22 application for a certificate of authority to transact business as a foreign corporation,
23 limited liability company or limited partnership or a statement of foreign
24 qualification from a business entity which includes in its name or, among objects
25 for which it is established, any of the words, "engineer," "engineering," "surveyor,"
26 "surveying," "land surveying," or any modification or derivation thereof, unless the
27 filing with the Secretary of State includes a certificate or letter from the board.

1 ➔Section 142. KRS 362.401 is repealed and reenacted to read as follows:

2 As used in KRS 362.403 to 362.525, unless the context otherwise requires, the term:

- 3 (1) "Certificate of limited partnership" means the certificate referred to in KRS
4 362.415, or the certificate of limited partnership as amended or restated;
- 5 (2) "Business entity" means a domestic or foreign limited liability company,
6 corporation, partnership, limited partnership, business or statutory trust and not-for-
7 profit unincorporated association;
- 8 (3) "Contribution" means any cash, property, services rendered, or a promissory note or
9 other obligation to contribute cash or property or to perform services, which a
10 partner contributes to a limited partnership in his capacity as a partner;
- 11 (4) "Event of withdrawal of a general partner" means an event that causes a person to
12 cease to be a general partner as provided in KRS 362.445;
- 13 (5) "Foreign limited partnership" means a limited partnership formed under the laws of
14 any state other than this state and having as partners one (1) or more general
15 partners and one (1) or more limited partners;
- 16 (6) "General partner" means a person who has been admitted to a limited partnership as
17 a general partner in accordance with the partnership agreement and is named in the
18 certificate of limited partnership as a general partner;
- 19 (7) "Limited partner" means a person who has been admitted to a limited partnership as
20 a limited partner in accordance with the partnership agreement;
- 21 (8) "Limited partnership" or "domestic limited partnership" means a partnership formed
22 by two (2) or more persons under the laws of this state and having one (1) or more
23 general partners and one (1) or more limited partners;
- 24 (9) "Name of record with the Secretary of State" means any real, fictitious, reserved,
25 registered, or assumed name of a business entity;
- 26 (10) "Partner" means a limited partner or general partner;
- 27 (11) "Partnership agreement" means any valid agreement, written or oral, of the partners

- 1 as to the affairs of a limited partnership and the conduct of its business;
- 2 (12) "Partnership interest" means a partner's share of the profits and losses of a limited
- 3 partnership and the right to receive distributions of partnership assets;
- 4 (13) "Person" means a natural person; trust; estate; or business entity;
- 5 (14) "Real name" shall have the meaning set forth in KRS 365.015; and
- 6 (15) "State" means a state, territory, or possession of the United States, the District of
- 7 Columbia or the Commonwealth of Puerto Rico.

8 ➔Section 143. KRS 362.403 is repealed and reenacted to read as follows:

9 The name of each limited partnership as set forth in its certificate of limited partnership:

- 10 (1) Shall contain the word "Limited" or its abbreviation, "Ltd.";
- 11 (2) Shall not contain the name of a limited partner unless:
- 12 (a) That name is also the name of a general partner or the corporate name of a
- 13 corporate general partner; or
- 14 (b) The business of the limited partnership had been carried on under that name
- 15 before the admission of that limited partner; and
- 16 (3) Shall be distinguishable from any name of record with the Secretary of State.

17 ➔Section 144. KRS 362.405 is repealed and reenacted to read as follows:

- 18 (1) The exclusive right to the use of a name may be reserved by:
- 19 (a) Any person intending to organize a limited partnership under KRS 362.403 to
- 20 362.525 and to adopt that name;
- 21 (b) Any domestic limited partnership or any foreign limited partnership registered
- 22 in this state which, in either case, intends to adopt that name;
- 23 (c) Any foreign limited partnership intending to register in this state and adopt
- 24 that name; or
- 25 (d) Any person intending to organize a foreign limited partnership and intending
- 26 to have it registered in this state and adopt that name.
- 27 (2) The reservation shall be made by filing with the Secretary of State an application,

1 executed by the applicant, to reserve a specified name. If the Secretary of State finds
 2 that the name is available for use by a domestic limited partnership or foreign
 3 limited partnership, it shall reserve the name for the exclusive use of the applicant
 4 for a nonrenewable period of one hundred twenty (120) days. The right to the
 5 exclusive use of a reserved name may be transferred to any other person by filing
 6 with the Secretary of State a notice of the transfer, executed by the applicant for
 7 whom the name was reserved and specifying the name and address of the transferee.
 8 During the thirty (30) days prior to the expiration of a reservation, the holder thereof
 9 may apply to renew the reservation on such form as shall be provided by the
 10 Secretary of State. The renewal shall be effective as of the expiration of the current
 11 reservation and shall renew the reservation for an additional one hundred twenty
 12 (120) days from the expiration.

13 (3) The holder of a reserved name may cancel the reservation by delivery to the
 14 Secretary of State of a notice of cancellation, executed by the applicant for whom
 15 the name was reserved, that states the reserved name and its date of reservation.

16 ➔Section 145. KRS 362.555 is repealed and reenacted to read as follows:

17 (1) To become and to continue as a registered limited liability partnership, a partnership
 18 that is not a limited partnership shall file with the Secretary of State a statement or a
 19 renewal statement, as the case may be, stating the name of the partnership; the
 20 address of its principal office; the number of partners; the names of the partners; a
 21 brief statement of the business in which the partnership engages; and that the
 22 partnership registers its status or renews its status, as the case may be, as a
 23 registered limited liability partnership.

24 (2) The statement or renewal statement shall be executed by a majority in interest of the
 25 partners or by one (1) or more partners authorized to execute a statement or renewal
 26 statement.

27 (3) The statement or renewal statement shall be accompanied by a fee of two hundred

1 dollars (\$200).

2 (4) The Secretary of State shall register as a registered limited liability partnership, and
3 shall renew the registration of any registered limited liability partnership, any
4 partnership that submits a completed statement or renewal statement with the
5 required fee.

6 (5) Registration shall be effective for one (1) year after the date a statement is filed,
7 unless voluntarily withdrawn by filing with the Secretary of State a written
8 withdrawal notice executed by a majority in interest of the partners or by one (1) or
9 more partners authorized to execute a withdrawal notice. Registration, whether
10 pursuant to an original statement or a renewal statement, as a registered limited
11 liability partnership shall be renewed if, during the sixty (60) day period preceding
12 the date the statement or renewal statement otherwise would have expired, the
13 partnership files with the Secretary of State a renewal statement. Registration
14 pursuant to a renewal statement shall expire one (1) year after the date the
15 registration would have expired if the last renewal of the registration had not
16 occurred.

17 (6) The status of a partnership as a registered limited liability partnership shall not be
18 affected by changes made in the information stated in the statement or renewal
19 statement after the filing of the statement or renewal statement.

20 (7) The Secretary of State may provide forms for use under this section.

21 ➔Section 146. KRS 362.595 is repealed and reenacted to read as follows:

22 (1) The failure of a registered limited liability partnership to comply with any
23 requirements of KRS 362.555 shall not impair the validity of any contract, deed,
24 mortgage, security interest, lien, or act of the registered limited liability partnership
25 or prevent the registered limited liability partnership from defending any action,
26 suit, or proceeding in any court of this Commonwealth.

27 (2) Subject to subsection (3) of this section, the protection from liability of a partner of

1 a registered limited liability partnership under KRS 362.220(2) shall not be altered
 2 by reason of the failure of the partnership to comply with any requirements of KRS
 3 362.555.

4 (3) A partner in a partnership which has previously filed a statement under KRS
 5 362.555, and which has failed to comply with the renewal statement requirements
 6 of KRS 362.555, shall not be entitled to protection from liability under KRS
 7 362.220(2) in any action or proceeding brought by any person who did business
 8 with the partnership during the period it failed to comply and who did not at that
 9 time have actual knowledge that it was a limited liability partnership.

10 ➔Section 147. KRS 362.1-109 is repealed and reenacted to read as follows:

11 (1) The Secretary of State shall collect the following fees when the statements
 12 described in this subsection are delivered for filing:

- | | | |
|----|---|------------|
| 13 | (a) Statement of Partnership Authority | \$40.00 |
| 14 | (b) Statement of Denial | \$20.00 |
| 15 | (c) Statement of Dissociation | \$20.00 |
| 16 | (d) Statement of Dissolution | \$40.00 |
| 17 | (e) Statement of Merger | \$40.00 |
| 18 | (f) Statement of Qualification | \$40.00 |
| 19 | (g) Amendment to a Statement of Qualification | \$40.00 |
| 20 | (h) Statement of Foreign Qualification | \$90.00 |
| 21 | (i) Reinstatement of a Statement of Qualification | \$100.00 |
| 22 | (j) Change of Registered Agent or Change of the Address of the | |
| 23 | Registered Office, or Both | \$10.00 |
| 24 | (k) Registered Agent's Statement of Change of Registered Office | |
| 25 | for Each Affected Partnership | \$10.00 |
| 26 | not to exceed a total of..... | \$1,000.00 |
| 27 | (l) Change of the Mailing Address of the Chief Executive Office | \$10.00 |

- 1 (m) Application to Reserve a Name for Use by a Domestic or Foreign
- 2 Partnership \$15.00
- 3 (n) Notice of the Transfer of a Name Reserved for Use by a Domestic
- 4 or Foreign Partnership \$15.00
- 5 (o) Application for Registered Name \$36.00
- 6 (p) Application for Renewal of Registered Name \$36.00
- 7 (q) Annual report.....\$15.00
- 8 (r) Amendment to the annual report\$10.00
- 9 (s) All other filings \$40.00

10 (2) The Secretary of State shall collect the following fees for copying and certifying the
 11 copy of any filed statements relating to a domestic or foreign partnership:

- 12 (a) Fifty cents (\$0.50) a page for copying; and
- 13 (b) Five dollars (\$5) for the certificate.

14 ➔Section 148. KRS 362.1-115 is repealed and reenacted to read as follows:

- 15 (1) A person may apply to the Secretary of State to reserve the exclusive use of a
- 16 partnership name, including the fictitious name, for a limited liability partnership or
- 17 for a foreign limited liability partnership whose partnership name is not available
- 18 for use in this Commonwealth. If the Secretary of State finds that the name applied
- 19 for is available, then the Secretary of State shall reserve the name for the applicant's
- 20 exclusive use for a period of one hundred twenty (120) days. During the thirty (30)
- 21 days prior to the expiration of a reservation, the holder thereof may apply to renew
- 22 the reservation on such form as shall be provided by the Secretary of State. The
- 23 renewal shall be effective as of the expiration of the current reservation and shall
- 24 renew the reservation for an additional one hundred twenty (120) days from the
- 25 expiration.
- 26 (2) The holder of a reserved partnership name may transfer the reservation to another
- 27 person by delivering to the Secretary of State a notice of the transfer, executed by

1 the holder for whom the name was reserved, and specifying the name and address of
2 the transferee.

3 (3) The holder of a reserved partnership name may cancel the reservation by delivery to
4 the Secretary of State of a notice of cancellation, executed by the applicant for
5 whom the name was reserved, that states the reserved name and its date of
6 reservation.

7 ➔Section 149. KRS 362.1-504 is repealed and reenacted to read as follows:

8 (1) This section provides the exclusive remedy by which the judgment creditor of a
9 partner or the transferee of a partner may satisfy a judgment out of the judgment
10 debtor's transferable interest.

11 (2) On application to a court of competent jurisdiction by a judgment creditor of a
12 partner or a partner's transferee, a court may charge the transferable interest of the
13 judgment debtor with payment of the unsatisfied amount of the judgment. To the
14 extent so charged, the judgment creditor has only the rights of a transferee and shall
15 have no right to participate in the management of or to cause the dissolution of the
16 partnership. The court may appoint a receiver of the share of the distributions due or
17 to become due to the judgment debtor in respect of the partnership and make all
18 other orders, directions, accounts, and inquiries the judgment debtor might have
19 made or which the circumstances of the case may require to give effect to the
20 charging order.

21 (3) A charging order constitutes a lien on and the right to receive distributions made
22 with respect to the judgment debtor's transferable interest in the partnership.

23 (4) The court may order a foreclosure of the interest subject to the charging order at any
24 time. The purchaser at the foreclosure sale has the rights of a transferee. A charging
25 order does not of itself constitute an assignment of the transferable interest.

26 (5) At any time before foreclosure, an interest charged may be redeemed:

27 (a) By the judgment debtor;

1 (b) With property other than partnership property, by one (1) or more of the other
2 partners; or

3 (c) With partnership property, by one (1) or more of the other partners with the
4 consent of all of the partners whose interests are not so charged.

5 (6) This subchapter does not deprive a partner of a right under exemption laws with
6 respect to the partner's interest in the partnership.

7 ➔Section 150. KRS 362.1-802 is repealed and reenacted to read as follows:

8 (1) Subject to subsection (2) of this section, a partnership continues after dissolution
9 only for the purpose of winding up its business. The partnership is terminated when
10 the winding up of its business is completed.

11 (2) At any time after the dissolution of a partnership and before the winding up of its
12 business is completed, all of the partners, including any dissociating partner other
13 than a wrongfully dissociating partner, may waive the right to have the partnership's
14 business wound up and the partnership terminated. In that event:

15 (a) The partnership resumes carrying on its business as if dissolution had never
16 occurred, and any liability incurred by the partnership or a partner after the
17 dissolution and before the waiver is determined as if dissolution had never
18 occurred; and

19 (b) The rights of a third party accruing under KRS 362.1-804(1) or arising out of
20 conduct in reliance on the dissolution before the third party has notice of the
21 waiver shall not be adversely affected.

22 (3) The dissolution of a partnership that is or was a limited liability partnership shall
23 not abate or suspend KRS 362.1-306(3).

24 ➔Section 151. KRS 362.1-1104 is repealed and reenacted to read as follows:

25 (1) Activities of a foreign limited liability partnership which do not constitute
26 transacting business for the purposes of KRS 362.1-1001 to 362.1-1103 include:

27 (a) Maintaining, defending, or settling an action or proceeding;

- 1 (b) Holding meetings of its partners or carrying on any other activity concerning
- 2 its internal affairs;
- 3 (c) Maintaining bank accounts;
- 4 (d) Maintaining offices or agencies for the transfer, exchange, and registration of
- 5 the partnership's own securities or maintaining trustees or depositories with
- 6 respect to those securities;
- 7 (e) Selling through independent contractors;
- 8 (f) Soliciting or obtaining orders, whether by mail or through employees or
- 9 agents or otherwise, if the orders require acceptance outside this
- 10 Commonwealth before they become contracts;
- 11 (g) Creating or acquiring indebtedness, with or without a mortgage, or other
- 12 security interest in property;
- 13 (h) Collecting debts or foreclosing mortgages or other security interests in
- 14 property securing the debts, and holding, protecting, and maintaining property
- 15 so acquired;
- 16 (i) Conducting an isolated transaction that is completed within thirty (30) days
- 17 and is not one (1) in the course of repeated transactions of a like nature;
- 18 (j) Owning, without more, real or personal property; or
- 19 (k) Transacting business in interstate commerce.
- 20 (2) The list of activities in subsection (1) of this section shall not be considered
- 21 exhaustive. This section does not apply in determining the contacts or activities that
- 22 may subject a foreign limited liability partnership or any partner therein to service
- 23 of process, taxation, or regulation under any other law of this Commonwealth. The
- 24 term "transacting business" as used in this section shall have no effect on personal
- 25 jurisdiction under KRS 454.210.
- 26 ➔Section 152. KRS 362.2-109 is repealed and reenacted to read as follows:
- 27 (1) A person may apply to the Secretary of State to reserve the exclusive use of a

1 limited partnership name, including the fictitious name for a foreign limited
 2 partnership whose limited partnership name is not available for use in this
 3 Commonwealth. If the Secretary of State finds that the limited partnership name
 4 applied for is available, then the Secretary of State shall reserve the name for the
 5 applicant's exclusive use for a period of one hundred twenty (120) days. During the
 6 thirty (30) days prior to the expiration of a reservation, the holder thereof may apply
 7 to renew the reservation on such form as shall be provided by the Secretary of State.
 8 The renewal shall be effective as of the expiration of the current reservation and
 9 shall renew the reservation for an additional one hundred twenty (120) days from
 10 the expiration.

11 (2) The holder of a reserved limited partnership name may transfer the reservation to
 12 another person by delivering to the Secretary of State a notice of the transfer,
 13 executed by the holder for whom the name was reserved, and specifying the name
 14 and address of the transferee.

15 (3) The holder of a reserved limited partnership name may cancel the reservation by
 16 delivery to the Secretary of State of a notice of cancellation, executed by the
 17 applicant for whom the name was reserved, that states the reserved name and its
 18 date of reservation.

19 ➔Section 153. KRS 362.2-119 is repealed and reenacted to read as follows:

20 (1) The Secretary of State may prescribe and furnish on request forms for:

- 21 (a) A certificate of existence or authorization;
- 22 (b) An application for a certificate of authority;
- 23 (c) An application for a certificate of withdrawal;
- 24 (d) A statement of change of registered office or registered agent;
- 25 (e) A statement of change of designated office;
- 26 (f) Application to reserve or renew the reservation of a name;
- 27 (g) Application to cancel the reservation of a name;

- 1 (h) Resignation of a registered agent;
 - 2 (i) The annual report;
 - 3 (j) An amendment to the annual report; and
 - 4 (k) Amended application for certificate of authority.
- 5 (2) The Secretary of State may mandate the use of the forms listed in subsection (1) of
- 6 this section.
- 7 (3) The Secretary of State may prescribe and furnish on request forms for other records
- 8 required or permitted to be filed pursuant to this subchapter, but their use shall not
- 9 be mandatory.
- 10 ➔Section 154. KRS 362.2-121 is repealed and reenacted to read as follows:
- 11 (1) A record that satisfies the requirements of this section, and of any other section of
- 12 this subchapter that adds to or varies these requirements, shall be entitled to filing
- 13 by the Secretary of State.
- 14 (2) This subchapter shall require or permit filing the record in the Office of the
- 15 Secretary of State.
- 16 (3) The record shall contain the information required by this subchapter. It may also
- 17 contain other information.
- 18 (4) The record shall be typewritten or printed or, if electronically transmitted, it shall be
- 19 in a format that can be retrieved or reproduced in typewritten or printed form. The
- 20 typewritten or printed portion shall be in black. Manually signed photocopies or
- 21 other reproduced copies of typewritten or printed records may be filed.
- 22 (5) The record shall be in the English language. A limited partnership name may be in a
- 23 language other than English if written in English letters or Arabic or Roman
- 24 numerals. Any record that may be filed by a foreign limited partnership that is duly
- 25 authenticated by the official having custody of the applicable records in the state,
- 26 country, or other jurisdiction under whose law the limited liability company is
- 27 formed may be in a language other than English if accompanied by a reasonably-

- 1 authenticated English translation.
- 2 (6) The person executing the record shall sign it and print beneath or opposite his or her
3 signature the names of the person and the capacity in which he or she signs.
- 4 (7) The person executing the record may do so as an attorney-in-fact. Powers of
5 attorney relating to the execution of the record shall not be required to be provided
6 to or filed with the Secretary of State.
- 7 (8) A person who executes a record to be filed with the Secretary of State shall be
8 deemed to have declared under penalty of perjury that to that person's knowledge
9 the contents of the statement are accurate.
- 10 (9) (a) It shall be unlawful for any person to sign a statement the person knows is
11 false in any material respect with the intent that the statement be delivered to
12 the Secretary of State for filing.
- 13 (b) Any person who violates the provisions of this subsection shall be guilty of an
14 offense punishable by a fine not to exceed one hundred dollars (\$100).
- 15 (10) If the Secretary of State has prescribed a mandatory form for a record, then the
16 record shall be in or on the prescribed form.
- 17 (11) The record shall be delivered to the Secretary of State for filing. Delivery may be
18 made by electronic transmission if and to the extent permitted by the Secretary of
19 State. If it is filed in typewritten or printed form and not transmitted electronically,
20 then the Secretary of State may require that it be accompanied by two (2) exact or
21 conformed copies.
- 22 (12) One (1) exact or conformed copy, or, if transmitted electronically, a reproduction in
23 paper form, shall be filed with and recorded by the county clerk of the county in
24 which the registered office of the limited partnership is located. A county clerk shall
25 receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and
26 statements pertaining to limited partnerships. A document otherwise filed in
27 accordance with this section with the Secretary of State shall be effective regardless

1 of failure to file the document with the county clerk in accordance with this
2 subsection.

3 (13) When the record is delivered to the Secretary of State for filing, the correct filing
4 fee and any other moneys required by this subchapter or other law to be collected by
5 the Secretary of State therewith shall be paid or provision for payment made in a
6 manner permitted by the Secretary of State. The Secretary of State may accept
7 payment of the correct amount due by credit card, debit card, charge card, or similar
8 method. However, if the amount due is tendered by any method other than cash,
9 then the liability is not finally discharged until the Secretary of State receives final
10 payment or credit of collectible funds.

11 ➔Section 155. KRS 362.2-210 is repealed and reenacted to read as follows:

12 (1) A limited partnership subject to this subchapter or a foreign limited partnership
13 authorized to transact business in this Commonwealth shall deliver to the Secretary
14 of State for filing an annual report that states:

15 (a) The name of the limited partnership or foreign limited partnership and the
16 state or country under whose law it is organized;

17 (b) The street address of its designated office or, if a foreign limited partnership,
18 the street address of its principal office; and

19 (c) The street address of the limited partnership's registered office and the name
20 of its registered agent at that office.

21 (2) Information in an annual report shall be current as of the date the annual report is
22 delivered to the Secretary of State for filing.

23 (3) The first annual report shall be delivered to the Secretary of State between January 1
24 and June 30 of the year following the calendar year in which a limited partnership
25 was formed or a foreign limited partnership was authorized to transact business.
26 Subsequent annual reports shall be delivered to the Secretary of State between
27 January 1 and June 30 of the ensuing calendar years.

1 (4) If a filed annual report contains an address of a designated office or the name of a
2 registered agent or registered office address which differs from the information
3 shown upon the records of the Secretary of State immediately before the filing, then
4 the differing information in the annual report is not considered a statement of
5 change under KRS 362.2-115.

6 (5) A limited partnership or foreign limited partnership may amend the information in
7 its last filed annual report by delivery to the Secretary of State of an amendment to
8 the annual report on an appropriate form provided by the Secretary of State.

9 ➔Section 156. KRS 362.2-703 is repealed and reenacted to read as follows:

10 (1) This section provides the exclusive remedy by which the judgment creditor of a
11 partner or the transferee of a partner may satisfy a judgment out of the judgment
12 debtor's transferable interest.

13 (2) On application to a court of competent jurisdiction by any judgment creditor of a
14 partner or a partner's transferee, the court may charge the transferable interest of the
15 judgment debtor with payment of the unsatisfied amount of the judgment. To the
16 extent so charged, the judgment creditor has only the rights of a transferee, and shall
17 have no right to participate in the management or to cause the dissolution of the
18 partnership. The court may appoint a receiver of the share of the distributions due or
19 to become due to the judgment debtor in respect of the partnership and make all
20 other orders, directions, accounts, and inquiries the judgment debtor might have
21 made or which the circumstances of the case may require to give effect to the
22 charging order.

23 (3) A charging order constitutes a lien on and the right to receive distributions made
24 with respect to the judgment debtor's transferable interest. A charging order does
25 not of itself constitute an assignment of the transferable interest.

26 (4) The court may order a foreclosure upon the transferable interest subject to the
27 charging order at any time. The purchaser at the foreclosure sale has the rights of a

1 transferee.

2 (5) At any time before foreclosure, an interest charged may be redeemed:

3 (a) By the judgment debtor;

4 (b) With property other than limited partnership property, by one (1) or more of
5 the other partners; or

6 (c) With limited partnership property, by the limited partnership with the consent
7 of all partners whose interests are not so charged.

8 (6) This subchapter does not deprive any partner or a partner's transferee of the benefit
9 of any exemption laws applicable to the partner's or transferee's transferable
10 interest.

11 ➔Section 157. KRS 362.2-803 is repealed and reenacted to read as follows:

12 (1) A limited partnership continues after dissolution only for the purpose of winding up
13 its activities.

14 (2) In winding up its business, the limited partnership:

15 (a) May amend its certificate of limited partnership to state that the limited
16 partnership is dissolved, preserve the limited partnership business or property
17 as a going concern for a reasonable time, prosecute and defend actions and
18 proceedings, whether civil, criminal, or administrative, transfer the limited
19 partnership's property, settle disputes by mediation or arbitration, file a
20 statement of cancellation as provided in KRS 362.2-203, and perform other
21 necessary acts; and

22 (b) Shall discharge the limited partnership's liabilities, settle and close the limited
23 partnership's activities, and marshal and distribute the assets of the
24 partnership.

25 (3) If a dissolved limited partnership does not have a general partner, a person to wind
26 up the dissolved limited partnership's activities may be appointed by the consent of
27 limited partners owning a majority of the rights to receive distributions as limited

1 partners at the time the consent is to be effective. A person appointed under this
 2 subsection:

3 (a) Has the powers of a general partner under KRS 362.2-804; and

4 (b) Shall promptly amend the certificate of limited partnership to:

5 1. State that the limited partnership does not have a general partner and that
 6 the person has been appointed to wind up the limited partnership; and

7 2. State the street and mailing address of the person.

8 (4) On the application of any partner, the Circuit Court of the county in which the
 9 limited partnership maintains its registered agent may order judicial supervision of
 10 the winding up, including the appointment of a person to wind up the dissolved
 11 limited partnership's activities, if:

12 (a) A limited partnership does not have a general partner and, within a reasonable
 13 time following the dissolution, no person has been appointed pursuant to
 14 subsection (3) of this section; or

15 (b) The applicant establishes other good cause.

16 (5) The dissolution of a limited partnership shall not abate or suspend KRS 362.2-303,
 17 and the dissolution of a limited partnership that is a limited liability limited
 18 partnership shall not abate or suspend KRS 362.2-404(3).

19 ➔Section 158. KRS 362.2-901 is repealed and reenacted to read as follows:

20 (1) The laws of the state or other jurisdiction under which a foreign limited partnership
 21 is organized govern its organization and internal affairs, including the inspection of
 22 books, records, and documents, and the liability of its partners as partners.

23 (2) A foreign limited partnership shall not be denied a certificate of authority by reason
 24 of any difference between the laws of the jurisdiction under which the foreign
 25 limited partnership is organized and the laws of this Commonwealth.

26 (3) A certificate of authority does not authorize a foreign limited partnership to engage
 27 in any business or exercise any power that a limited partnership may not engage in

1 or exercise in this Commonwealth.

2 ➔Section 159. KRS 362.2-903 is repealed and reenacted to read as follows:

3 (1) Activities of a foreign limited partnership which do not constitute transacting
4 business in this Commonwealth within the meaning of KRS 362.2-901 to 362.2-908
5 include:

6 (a) Maintaining, defending, and settling an action or proceeding;

7 (b) Holding meetings of its partners or carrying on any other activity concerning
8 its internal affairs;

9 (c) Maintaining accounts in financial institutions;

10 (d) Maintaining offices or agencies for the transfer, exchange, and registration of
11 the foreign limited partnership's own securities or maintaining trustees or
12 depositories with respect to those securities;

13 (e) Selling through independent contractors;

14 (f) Soliciting or obtaining orders, whether by mail or electronic means or through
15 employees or agents or otherwise, if the orders require acceptance outside this
16 Commonwealth before they become contracts;

17 (g) Creating or acquiring indebtedness, mortgages, or security interests in real or
18 personal property;

19 (h) Securing or collecting debts or enforcing mortgages or other security interests
20 in property securing the debts, and holding, protecting, and maintaining
21 property so acquired;

22 (i) Owning, without more, real or personal property;

23 (j) Conducting an isolated transaction that is completed within thirty (30) days
24 and is not one in the course of similar transactions of a like manner; and

25 (k) Transacting business in interstate commerce.

26 (2) The list of activities in subsection (1) of this section shall not be considered
27 exhaustive. This section does not apply in determining the contacts or activities that

1 may subject a foreign limited partnership to service of process, taxation, or
 2 regulation under any other law of this Commonwealth.

3 (3) The term "transacting business" as used in this section shall have no effect on
 4 personal jurisdiction under KRS 454.210.

5 ➔Section 160. KRS 362.2-906 is repealed and reenacted to read as follows:

6 The Secretary of State may commence a proceeding under KRS 362.2-907 to revoke the
 7 certificate of authority of a foreign partnership authorized to transact business in this
 8 Commonwealth if:

9 (1) The foreign partnership does not file its annual report to the Secretary of State
 10 within sixty (60) days after it is due;

11 (2) The foreign partnership is without a registered agent or registered office in this
 12 Commonwealth for sixty (60) days or more;

13 (3) The foreign partnership does not inform the Secretary of State that its registered
 14 agent or registered office has changed, that its registered agent has resigned, or that
 15 its registered office has been discontinued within sixty (60) days of the change,
 16 resignation, or discontinuance; or

17 (4) The Secretary of State receives a duly authenticated certificate from the Secretary of
 18 State or other official having custody of partnership records in the state or other
 19 jurisdiction under whose law the foreign limited partnership is organized stating
 20 that it has been dissolved or disappeared as the result of a merger.

21 ➔Section 161. KRS 362.2-1104 is repealed and reenacted to read as follows:

22 (1) After a plan of conversion of a limited liability company into a limited partnership
 23 is approved, a converting limited liability company shall deliver to the Secretary of
 24 State for filing a certificate of limited partnership, which shall include:

25 (a) A statement that the limited liability company has been converted into a
 26 limited partnership;

27 (b) The name of that limited liability company and its jurisdiction;

- 1 (c) A statement that the conversion was approved as required by this subchapter;
- 2 (d) A statement that the conversion was approved as required by the governing
- 3 statute of the converted limited liability company; and
- 4 (e) If the converted limited liability company is a foreign limited liability
- 5 company not authorized to transact business in this Commonwealth, the street
- 6 and mailing address of an office which the Secretary of State may use for the
- 7 purposes of KRS 362.2-1105(3).

- 8 (2) A conversion of a limited liability company into a limited partnership becomes
- 9 effective when the certificate of limited partnership takes effect.

10 ➔Section 162. KRS 362.2-1108 is repealed and reenacted to read as follows:

- 11 (1) After a plan of merger is approved by each domestic or foreign partnership, limited
- 12 partnership, limited liability company, or corporation that is a party to the merger,
- 13 the surviving domestic or foreign partnership, limited partnership, limited liability
- 14 company, or corporation shall deliver to the Secretary of State for filing articles of
- 15 merger duly executed by each party to the merger setting forth:

- 16 (a) The name and jurisdiction of formation or organization of each constituent
- 17 business entity which is to merge;
- 18 (b) The plan of merger;
- 19 (c) The name of the surviving business entity;
- 20 (d) A statement that the plan of merger was duly authorized and approved by each
- 21 constituent business entity in accordance with the laws applicable to such
- 22 business entity; and
- 23 (e) If the surviving entity is not a business entity organized under the laws of this
- 24 Commonwealth, a statement that the surviving business entity:
- 25 1. Agrees that it may be served with process in this Commonwealth in any
- 26 proceeding for enforcement of any obligation of any constituent business
- 27 entity party to the merger that was organized under the laws of this

1 Commonwealth, as well as for enforcement of any obligation of the
2 surviving business entity arising from the merger; and

3 2. Appoints the Secretary of State as its agent for service of process in any
4 such proceedings. The surviving entity shall specify the address to which
5 a copy of process shall be mailed to it by the Secretary of State.

6 (2) The merger shall take effect on the later of the date of the filing of the articles of
7 merger or the date set forth in the articles of merger, in which case it shall not be
8 later than ninety (90) days after the date on which the articles of merger were filed.

9 (3) Upon the merger taking effect, if the surviving entity in the merger is a foreign
10 partnership, limited partnership, or limited liability company, the entity shall be
11 deemed:

12 (a) To appoint the Secretary of State as its agent for service of process in a
13 proceeding to enforce any obligation or rights of dissenting shareholders of
14 each domestic corporation party to the merger; and

15 (b) To agree that it will promptly pay to the dissenting shareholders of each
16 domestic corporation party to the merger the amount, if any, to which they are
17 entitled under Subtitle 13 of KRS Chapter 271B.

18 (4) The articles of merger filed by the surviving entity in accordance with this section
19 shall also be deemed to have been filed for any domestic limited liability company
20 party to the merger in accordance with the applicable provisions of KRS Chapter
21 275 and for any domestic corporation party to the merger in accordance with KRS
22 Chapter 271B.

23 (5) The filing of articles of merger shall act to cancel the certificate of limited
24 partnership for a domestic limited partnership that is not the surviving entity of the
25 merger and that partnership's certificate of limited partnership shall be canceled
26 upon the effective date of the articles of merger.

27 ➔Section 163. KRS 365.015 is repealed and reenacted to read as follows:

1 (1) (a) The real name of an individual shall include his or her surname at birth, or his
 2 or her name as changed by a court of competent jurisdiction, or the surname of
 3 a married woman.

4 (b) The real name of a domestic:

- 5 1. General partnership that is not a limited liability partnership and that has
 6 not filed a statement of partnership authority is that name which includes
 7 the real name of each of the partners;
- 8 2. General partnership that is not a limited liability partnership and that has
 9 filed a statement of partnership authority is the name set forth on the
 10 statement of partnership authority;
- 11 3. General partnership that is a limited liability partnership is the name
 12 stated on the statement of qualification filed pursuant to KRS 362.1-
 13 1001 or predecessor law;
- 14 4. Limited partnership is that name stated in its certificate of limited
 15 partnership filed pursuant to KRS 362.2-201 or predecessor law;
- 16 5. Business trust is the name set forth in the declaration of trust;
- 17 6. Corporation is the name set forth in its articles of incorporation; and
- 18 7. Limited liability company is the name set forth in its articles of
 19 organization.

20 (c) The real name of a foreign:

- 21 1. General partnership is the name recognized by the laws of the
 22 jurisdiction under which it is formed as being the real name;
- 23 2. Limited liability partnership is the name stated in its statement of foreign
 24 qualification filed pursuant to KRS 362.1-1102 or predecessor law;
- 25 3. Limited partnership is the name set forth in its certificate of limited
 26 partnership or the fictitious name adopted for use in this Commonwealth
 27 under KRS 362.2-905 or predecessor law;

- 1 4. Business trust is the name recognized by the laws of the jurisdiction
- 2 under which it is formed as being the real name of the business trust;
- 3 5. Corporation is the name set forth in its articles of incorporation or the
- 4 fictitious name adopted for use in this Commonwealth under KRS
- 5 271B.15-060; and
- 6 6. Limited liability company is the name set forth in its articles of
- 7 organization or the fictitious name adopted for use in this
- 8 Commonwealth under KRS 275.410.
- 9 (2) (a) No individual, general partnership, limited partnership, business trust,
- 10 corporation, or limited liability company shall conduct or transact business in
- 11 this Commonwealth under an assumed name or any style other than his or its
- 12 real name, as defined in subsection (1) of this section, unless such individual,
- 13 partnership, limited partnership, business trust, corporation, or limited liability
- 14 company has filed a certificate of assumed name;
- 15 (b) The certificate shall state the assumed name under which the business will be
- 16 conducted or transacted, the real name of the individual, partnership, limited
- 17 partnership, business trust, corporation, or limited liability company and his or
- 18 its address, including street and number, if any;
- 19 (c) A separate certificate shall be filed for each assumed name;
- 20 (d) No certificate to be filed with the Secretary of State shall set forth an assumed
- 21 name which is not distinguishable upon the records of the Secretary of State
- 22 from any other name previously filed and on record with the Secretary of
- 23 State;
- 24 (e) The certificate shall be executed for an individual, by the individual; for a
- 25 general partnership, by at least one (1) partner authorized to do so by the
- 26 partners; for a limited partnership, by a general partner; for a business trust, by
- 27 a trustee; for a corporation, by any person authorized to act for the

1 corporation; and for a limited liability company, by a member or manager
2 authorized to act for the limited liability company.

3 (3) Each certificate of assumed name for an individual shall be filed with the county
4 clerk where the person maintains his or her principal place of business. Each
5 certificate of assumed name for a general partnership, limited partnership, business
6 trust, corporation, or limited liability company shall be delivered to the Secretary of
7 State for filing, accompanied by one (1) exact or conformed copy. One (1) of the
8 exact or conformed copies stamped as "filed" by the Secretary of State shall be filed
9 with the county clerk of the county where the entity maintains its registered agent
10 for service of process or, if no registered agent for service of process is required,
11 then with the county clerk of the county where the entity maintains its principal
12 office. If the entity does not maintain a registered agent for service of process and
13 does not maintain a principal office in this Commonwealth, then the certificate of
14 assumed name shall be filed only with the Secretary of State.

15 (4) An assumed name shall be effective for a term of five (5) years from the date of
16 filing and may be renewed for successive terms upon filing a renewal certificate
17 within six (6) months prior to the expiration of the term, in the same manner of
18 filing the original certificate as set out in subsection (3) of this section. Any
19 certificate in effect on July 15, 1998, shall continue in effect for five (5) years and
20 may be renewed by filing a renewal certificate with the Secretary of State.

21 (5) Upon discontinuing the use of an assumed name, the certificate shall be withdrawn
22 by filing a certificate in the office wherein the original certificate of assumed name
23 was filed. The certificate of withdrawal shall state the assumed name, the real name
24 and address of the party formerly transacting business under the assumed name and
25 the date upon which the original certificate was filed. The certificate of withdrawal
26 shall be signed for a general partnership by at least one (1) partner authorized to act
27 for the partnership, for a limited partnership by a general partner, for a business trust

1 by a trustee, for a corporation by any person authorized to act for the corporation,
2 and for a limited liability company by a member or manager authorized to act for
3 the limited liability company.

4 (6) A general partnership, except a limited liability partnership, shall amend an
5 assumed name to reflect a change in the identity of partners. The amendment shall
6 set forth:

7 (a) The assumed name and date of original filing;

8 (b) A statement setting out the changes in identity of the partners; and

9 (c) Shall be signed by at least one (1) partner authorized to do so by the partners.

10 (7) The filing of a certificate of assumed name shall not automatically prevent the use
11 of that name or protect that name from use by other persons.

12 (8) In the event of the merger or conversion of a partnership, limited partnership,
13 business trust, corporation, or limited liability company, any certificate of assumed
14 name filed by a party to a merger or conversion shall remain in full force and effect,
15 as provided in subsection (4) of this section, as if originally filed by the business
16 organization which survives the merger or conversion.

17 (9) A certificate of assumed name may be amended to revise the real name or the
18 address of the person or business organization holding the certificate of assumed
19 name.

20 (10) A certificate of assumed name, or its amendment or cancellation, shall be effective
21 on the date it is filed, as evidenced by the Secretary of State's date and time
22 endorsement on the original document, or at a time specified in the document as its
23 effective time on the date it is filed. The document may specify a delayed effective
24 time and date and, if it does so, the document shall become effective at the time and
25 date specified. If a delayed effective date but no time is specified, the document
26 shall be effective at the close of business on that date. A delayed effective date for a
27 document shall not be later than the ninetieth day after the date it is filed.

1 (11) The county clerk shall receive a fee pursuant to KRS 64.012 for filing each
 2 certificate, and the Secretary of State shall receive a fee of twenty dollars (\$20) for
 3 filing each certificate, amendment, and renewal certificate.

4 ➔Section 164. KRS 386.370 is repealed and reenacted to read as follows:

5 (1) A business trust is an express trust created by a written declaration of trust whereby
 6 property is conveyed to one (1) or more trustees, who hold and manage same for the
 7 benefit and profit of such persons as may be or become, the holders of transferable
 8 certificates evidencing the beneficial interest in the trust estate. For the purposes of
 9 KRS 386.370 to 386.440, business trusts shall include but are not limited to "Real
 10 Estate Investment Trusts" as defined by and which comply with the Federal Internal
 11 Revenue Code of 1986 as amended or such section or sections of any subsequent
 12 Internal Revenue Code as may be applicable to real estate investment trusts.

13 (2) "Business entity" means a domestic or foreign limited liability company,
 14 corporation, partnership, limited partnership, business or statutory trust, and not-for-
 15 profit unincorporated association.

16 (3) "Name of record with the Secretary of State" means any real, fictitious, reserved,
 17 registered, or assumed name of a business entity.

18 ➔Section 165. KRS 386.410 is repealed and reenacted to read as follows:

19 No beneficial owner of certificates in a foreign business trust shall have his interests
 20 therein assessed and no beneficial owner of a foreign trust shall be personally liable for
 21 any debts or liabilities incurred by the trustees or by the foreign business trust after June
 22 16, 1966.

23 ➔Section 166. KRS 386.420 is repealed and reenacted to read as follows:

24 (1) The written declaration of trust may provide for the election of successor trustees in
 25 the event of the death, resignation and removal of a trustee and may provide for the
 26 amendment of the declaration of trust. The declaration of trust may also contain
 27 such other provisions regarding the operating and administration of the business

1 trust as may be necessary or desirable.

2 (2) A declaration of trust filed on or after June 26, 2007, shall name or shall be
3 accompanied by a document naming the initial registered agent and registered office
4 conforming to KRS 386.384.

5 (3) The declaration of trust shall be recorded in the office of the Secretary of State of
6 the Commonwealth of Kentucky and in the office of the county clerk in the county
7 in which its principal place of business is located and a recording charge of \$15
8 shall be paid at each of those offices.

9 ➔Section 167. KRS 386.440 is repealed and reenacted to read as follows:

10 A business trust may be sued for debts and other obligations incurred by the trustees in
11 the performance of their duties under the declaration of trust, and for any damages
12 resulting from the negligence of such trustees and its property shall be subject to
13 attachment and execution in like manner as if it were a corporation.

14 ➔Section 168. KRS 275.090 is repealed and reenacted to read as follows:

15 (1) It shall be unlawful for any person to sign a document the person knows is false in
16 any material respect with intent that the document be delivered to the Secretary of
17 State for filing.

18 (2) Any person who violates the provisions of this section shall be guilty of an offense
19 punishable by a fine not to exceed one hundred dollars (\$100).

20 ➔Section 169. KRS 362.1-105 is repealed and reenacted to read as follows:

21 (1) A statement may be filed in the office of Secretary of State. A filed statement has
22 the effect provided in this subchapter with respect to partnership property located in
23 or transactions that occur in this Commonwealth.

24 (2) A certified copy of a statement that has been filed in the office of the Secretary of
25 State may be filed with and recorded by any county clerk to which the statement is
26 presented for filing and recording.

27 (3) A statement filed by a partnership shall be executed by at least two (2) partners.

1 Other statements shall be executed by a partner or other person authorized by this
2 subchapter.

3 (4) A person authorized by this subchapter to file a statement may amend or cancel the
4 statement by filing an amendment or cancellation that names the partnership,
5 identifies the statement, and states the substance of the amendment or cancellation.
6 No amendment or cancellation shall be made with respect to a statement of merger
7 or statement of dissolution after filing with the Secretary of State.

8 (5) A person authorized by this subchapter to file a statement may correct a filed
9 statement if the statement contains information that was incorrect as of the time of
10 the original filing or if the statement was defectively executed, attested, sealed,
11 verified, or acknowledged. A statement is corrected by filing with the Secretary of
12 State a statement of correction that describes the original filing, specifies the
13 information that was incorrect as of the original filing or the manner in which the
14 execution was defective, corrects the incorrect information or the defective
15 execution, and is accompanied by a copy of the original defective statement,
16 accompanied by the proper filing fee. A statement of correction shall be effective as
17 of the effective date of the statement it corrects except as to persons relying on the
18 uncorrected document adversely affected by the correction. As to those persons, the
19 statement of correction shall be effective in the same manner as they were on notice
20 of the original statement.

21 (6) A person who files a statement pursuant to this section shall promptly send a copy
22 of the statement to every nonfiling partner and to any other person named as a
23 partner in the statement. Failure to send a copy of a statement to a partner or other
24 person does not limit the effectiveness of the statement as to a person not a partner.

25 (7) A person who executes a statement shall be deemed to have declared under penalty
26 of perjury that to that person's knowledge the contents of the statement are accurate.

27 (8) (a) It shall be unlawful for any person to sign a statement the person knows is

1 false in any material respect with the intent that the statement be delivered to
2 the Secretary of State for filing.

3 (b) Any person who violates this subsection shall be guilty of an offense
4 punishable by a fine not to exceed one hundred dollars (\$100).

5 (9) The Secretary of State may collect a fee for filing or providing a certified copy of a
6 statement. The county clerk may collect a fee of ten dollars (\$10) for recording a
7 statement.

8 (10) The Secretary of State may prescribe and furnish on request forms for:

9 (a) A statement of change of registered office or registered agent;

10 (b) An application to reserve a name;

11 (c) An application to cancel the reservation of a name;

12 (d) A resignation of a registered agent or registered office or both;

13 (e) An annual report; and

14 (f) An amendment to the annual report.

15 (11) The Secretary of State may mandate the use of the forms listed in subsection (10) of
16 this section.

17 (12) The Secretary of State may prescribe and furnish on request forms for any other
18 records required or permitted to be filed pursuant to this subchapter, but their use
19 shall not be mandatory.

20 ➔Section 170. KRS 362.575 is repealed and reenacted to read as follows:

21 (1) A registered limited liability partnership, formed and existing under KRS 362.155,
22 362.175, 362.190, 362.220, 362.235, 362.315, 362.325, 362.345, and KRS 362.555
23 to 362.605, may conduct its business, carry on its operations, and have and exercise
24 the powers granted by KRS 362.155, 362.175, 362.190, 362.220, 362.235, 362.315,
25 362.325, 362.345, and KRS 362.555 to 362.605 in any state, territory, district, or
26 possession of the United States or in any foreign country.

27 (2) It is the intent of the General Assembly that the legal existence of any registered

1 limited liability partnership formed and existing under KRS 362.155, 362.175,
 2 362.190, 362.220, 362.235, 362.315, 362.325, 362.345, and KRS 362.555 to
 3 362.605 shall be recognized outside the boundaries of this Commonwealth and that
 4 the laws of this Commonwealth governing any registered limited liability
 5 partnership transacting business outside this Commonwealth shall be granted the
 6 protection of full faith and credit under the Constitution of the United States.

7 (3) It is the policy of this Commonwealth that the internal affairs of registered limited
 8 liability partnerships, formed and existing under KRS 362.155, 362.175, 362.190,
 9 362.220, 362.235, 362.315, 362.325, 362.345, and KRS 362.555 to 362.605,
 10 including the liability of partners for debts, obligations, and liabilities chargeable to
 11 partnerships, shall be subject to and governed by the laws of this Commonwealth.

12 (4) Subject to any statutes for the regulation and control of specific types of business
 13 limited liability partnerships, formed and existing under the laws of another state or
 14 jurisdiction, may engage in any business in this Commonwealth.

15 (5) It is the policy of this Commonwealth that the internal affairs of partnerships,
 16 including limited liability partnerships, formed and existing under the laws of
 17 another state or jurisdiction, including the liability of partners for debts, obligations,
 18 and liabilities chargeable to partnerships, shall be subject to and governed by the
 19 laws of that other state or jurisdiction.

20 ➔Section 171. KRS 45.560 is repealed and reenacted to read as follows:

21 As used in KRS 45.570 to 45.640, unless the context requires otherwise:

22 (1) "Contract" means any binding legal relationship between the Commonwealth of
 23 Kentucky and a contractor for supplies and services, including construction, or for
 24 the use of Commonwealth property, in which the parties, respectively, do not stand
 25 in the relationship of employer and employee;

26 (2) "Contractor" means any prime contractor holding a contract with the
 27 Commonwealth of Kentucky government, and shall include subcontractors when

1 the context so indicates;

2 (3) "Contracting agency" means the person or persons, board, commission, court,
3 council, governing body, employee, or official which is authorized by law to
4 purchase or contract for supplies, materials, services, or equipment for the state;

5 (4) "Subcontractor" means any person, including a corporation, partnership, or business
6 association of any kind, who holds an agreement or purchase order to perform all or
7 any part of the work or to make or furnish any article or service required for the
8 performance of a negotiated contract or of a subcontract entered thereunder;

9 (5) "Cabinet" means the Finance and Administration Cabinet; and

10 (6) "Equal employment opportunity job categories" means the major employment
11 classifications described by the United States Equal Employment Opportunity
12 Commission.

13 ➔Section 172. KRS 45.570 is repealed and reenacted to read as follows:

14 (1) Except in contracts exempted in accordance with KRS 45.590, all government
15 contracting agencies of the Commonwealth of Kentucky, any county, city, town,
16 school district, water district, hospital district, or other political subdivision of the
17 state shall include in every directly or indirectly publicly funded contract for
18 supplies, materials, services, or equipment hereinafter entered into the following
19 provisions:

20 (2) During the performance of this contract, the contractor agrees as follows:

21 (a) The contractor shall not discriminate against any employee or applicant for
22 employment because of race, color, religion, sex, age forty (40) and over,
23 disability, veteran status, or national origin;

24 (b) The contractor shall take affirmative action in regard to employment,
25 upgrading, demotion, transfer, recruitment, recruitment advertising, layoff,
26 termination, rates of pay or other forms of compensation, and selection for
27 training, so as to ensure that applicants are employed and that employees

1 during employment are treated without regard to their race, color, religion,
2 sex, age forty (40) and over, disability, veteran status, or national origin;

3 (c) The contractor shall state in all solicitations or advertisements for employees
4 placed by or on behalf of the contractor that all qualified applicants shall
5 receive consideration for employment without regard to race, color, religion,
6 sex, age forty (40) and over, disability, veteran status, or national origin;

7 (d) The contractor shall post notices in conspicuous places, available to
8 employees and applicants for employment, setting forth the provisions of the
9 nondiscrimination clauses required by this section; and

10 (e) The contractor shall send a notice to each labor union or representative of
11 workers with which he has a collective bargaining agreement or other contract
12 or understanding advising the labor union or workers' representative of the
13 contractor's commitments under the nondiscrimination clauses.

14 ➔Section 173. KRS 45.590 is repealed and reenacted to read as follows:

15 A contractor or subcontractor otherwise subject to the provisions of KRS 45.570 is
16 exempt as to any affirmative action or reporting requirements if:

17 (1) The contract or subcontract awarded is in the amount of five hundred thousand
18 dollars (\$500,000) or less, and the amount of the contract is not a subterfuge to
19 avoid compliance with the provisions of KRS 45.560 to 45.640;

20 (2) The contractor or subcontractor utilizes the services of fewer than eight (8)
21 employees during the course of the contract;

22 (3) The contractor or subcontractor employs only family members or relatives;

23 (4) The contractor or subcontractor employs only persons having a direct ownership
24 interest in the business, and such interest is not a subterfuge to avoid compliance
25 with the provisions of KRS 45.560 to 45.640; or

26 (5) The subcontract is below the second-tier level of contracts.

27 ➔Section 174. KRS 45.600 is repealed and reenacted to read as follows:

1 (1) Any party not otherwise exempted by KRS 45.590 and intending to submit a bid on
2 any contract covered by the provisions of KRS 45.560 to 45.640 shall within a time
3 frame set by the contracting agency in the bid documents submit to the contracting
4 agency upon being declared the successful bidder:

5 (a) A statement of intent to comply in full with all requirements of the Kentucky
6 Civil Rights Act, and to submit data required by KRS 45.560 to 45.640 upon
7 being designated the successful bidder.

8 (b) A breakdown of the bidding party's existing work force, indicating the race,
9 ethnicity, gender, and equal employment opportunity job category of each
10 employee.

11 (c) A breakdown of subcontracts valued at five hundred thousand dollars
12 (\$500,000) or more, indicating specific items of work on the contract for
13 which the contractor has submitted or intends to submit a bid to the
14 Commonwealth of Kentucky.

15 The reports shall be submitted in a manner as shall be prescribed by the cabinet and
16 on forms devised by the cabinet and supplied by the contracting agency.

17 (2) Within ten (10) days after the receipt of the reports, the cabinet shall determine
18 whether the bidding party's work force is reflective of the percentage of available
19 minorities and women in the area from which the bidding party's employees are
20 drawn. If a determination is made that the bidding party's work force is reflective of
21 the percentage of available minorities and women in this drawn area, the bidding
22 party shall be "certified" and be thereby qualified to bid on any contract covered by
23 KRS 45.560 to 45.640 without filing additional data for a period of one (1) year.

24 (3) If it is determined by the cabinet that the bidding party's work force reflects an
25 underutilization of minorities or women, the bidding party and contracting agency
26 shall be so notified, and no certification shall be issued. The bidding party shall then
27 have the option of filing with the contracting agency and the cabinet, an affirmative

1 action program, indicating goals and timetables for recruiting and hiring minorities
 2 or women throughout the contractors' work force. The cabinet shall be available,
 3 upon the request of any contractor, to furnish technical assistance in fulfilling the
 4 requirements of KRS 45.560 to 45.640.

5 (4) If the bidding party is subsequently awarded the contract being sought, failure to
 6 comply with the goals and timetables set forth in the affirmative action plan shall be
 7 an unlawful practice under KRS 45.560 to 45.640 and shall constitute a material
 8 breach of the contract.

9 (5) If the cabinet determines that the submitted affirmative action program does not
 10 fulfill the provisions of KRS 45.560 to 45.640, the bidding party and contracting
 11 agency shall be so notified, and no certification shall be granted.

12 (6) If the bidding party's work force is not reflective of the percentage of minorities or
 13 women in the drawing area and the bidding party has complied with all other
 14 affirmative action requirements in KRS 45.560 to 45.640, the bidding party may
 15 certify by verified affidavit that the bidding party has made every reasonable effort
 16 to comply with said percentage requirements, and the bidding party shall thereafter
 17 be entitled to all the benefits of KRS 45.560 to 45.640.

18 ➔Section 175. KRS 45.610 is repealed and reenacted to read as follows:

19 (1) For the length of the contract, each contractor shall hire minorities and women from
 20 other sources within the drawing area, should the union with which he has
 21 collective bargaining agreements be unwilling to supply sufficient minorities or
 22 women to satisfy the agreed upon goals and timetables.

23 (2) Each contractor shall, for the length of the contract, furnish such information as
 24 required by KRS 45.560 to 45.640 and by such rules, regulations, and orders issued
 25 pursuant thereto and will permit access to all books and records pertaining to his
 26 employment practices and work sites by the contracting agency and the cabinet for
 27 purposes of investigation to ascertain compliance with KRS 45.560 to 45.640 and

1 such rules, regulations, and orders issued pursuant thereto.

2 ➔Section 176. KRS 45.620 is repealed and reenacted to read as follows:

3 (1) The Finance and Administration Cabinet may investigate the employment practices
4 of any contractor or subcontractor to determine if any of the provisions of KRS
5 45.560 to 45.640 have been violated. If any contractor is found by the cabinet to
6 have engaged in an unlawful practice under KRS 45.560 to 45.640 during the
7 course of performing under a contract or subcontract covered under KRS 45.560 to
8 45.640, the cabinet shall so certify to the contracting agency and such certification
9 shall be binding upon the contracting agency unless it is reversed in the course of
10 judicial review.

11 (2) If the contractor is found to have committed an unlawful practice under KRS 45.560
12 to 45.640, the contracting agency may cancel or terminate the contract, conditioned
13 upon a program for future compliance approved by the contracting agency and the
14 cabinet. The contracting agency may declare such a contractor ineligible to bid on
15 further contracts with that agency until such time as the contractor complies in full
16 with the requirements of KRS 45.560 to 45.640.

17 (3) The equal employment provisions of KRS 45.560 to 45.640 may be met in part by a
18 contractor by subcontracting to a minority or woman contractor or subcontractor.
19 For the provisions of KRS 45.560 to 45.640, a minority or woman contractor or
20 subcontractor shall mean a business that is owned and controlled by one (1) or more
21 persons disadvantaged by racial, ethnic, or gender circumstances.

22 ➔Section 177. KRS 45.630 is repealed and reenacted to read as follows:

23 Any provision of KRS 45.560 to 45.640 notwithstanding, no contractor shall be required
24 to terminate an existing employee.

25 ➔Section 178. KRS 45.565 is repealed and reenacted to read as follows:

26 The Finance and Administration Cabinet may promulgate administrative regulations in
27 accordance with the provisions of KRS Chapter 13A to carry out the provisions of KRS

1 45.560 to 45.640.

2 ➔Section 179. The following KRS sections are repealed:

3 274.087 Merger or consolidation.

4 362.495 Law governing foreign limited partnerships. (Effective until January 1, 2008)

5 362.497 Registration of foreign limited partnership. (Effective until January 1, 2008)

6 362.499 Filing of application by foreign limited partnership. (Effective until January 1,
7 2008)

8 362.501 Name under which foreign limited partnership must register. (Effective until
9 January 1, 2008)

10 362.503 Changes and amendment. (Effective until January 1, 2008)

11 362.505 Cancellation of registration of foreign limited partnership. (Effective until
12 January 1, 2008)

13 362.507 Registration required for access to courts -- Effects of failure to
14 register. (Effective until January 1, 2008)

15 362.509 Action by Attorney General to restrain foreign limited partnership from
16 transacting business. (Effective until January 1, 2008)

17 362.585 Registration of foreign limited liability partnership -- Effect of withdrawal --
18 Injunctive action by Attorney General. (Effective until January 1, 2008)

19 ➔Section 180. The repeals set out in Section 179 of this Act are hereby expressly
20 made retroactive to the first moment of June 26, 2007.

21 ➔Section 181. 2006 Ky. Acts ch. 149, sec. 239 is repealed, and this repeal is
22 expressly made retroactive to June 26, 2007.

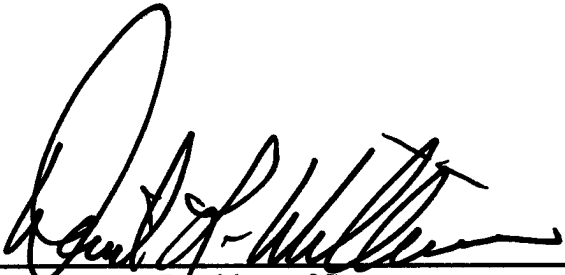
23 ➔Section 182. The General Assembly finds and declares that the amendment of
24 KRS 271B.6-210, 271B.6-230, 271B.7-040, 271B. 7-280, and 271B.8-080, as provided
25 for in 2002 Ky. Acts, ch. 102, secs. 10, 11, 15, 18, and 19 respectively, are and were
26 effective as of November 15, 2002.

27 ➔Section 183. The specific textual provisions of Sections 1 to 178 of this act

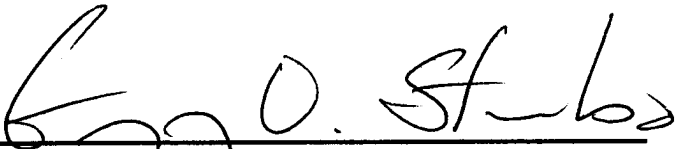
1 which reflect amendments made to those sections by 2007 Ky. Acts. ch. 137 shall be
2 deemed effective as of June 26, 2007, and those provisions are hereby made expressly
3 retroactive to that date, with the remainder of the text of those sections being unaffected
4 by the provisions of this section.

5 ➔Section 184. (1) It is the intent of the General Assembly that the repeal and
6 reenactment of sections in this Act shall not serve to void amendments made to those
7 sections by other bills enacted during the 2010 Regular session of the Kentucky General
8 Assembly, regardless of whether this Act is enacted before or after those other Acts.

9 (2) Notwithstanding KRS 446.100 or 446.260 or any other statute to the contrary,
10 the Reviser of Statutes shall give force and effect to other 2010 Acts that amend one or
11 more sections contained in this Act, and shall codify those amendments in accordance
12 with KRS 446.250 and other applicable rules of codification.



President of Senate



Speaker-House of Representatives

Attest: 

Chief Clerk of Senate

Approved 

Governor

Date March 30, 2010